

Libraries and the role of copyright exceptions and limitations in the contemporary academic environment

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Abstract

In the era of globalisation and economic crisis, library community, users and organizations retain serious considerations about the perspectives of libraries in the provision of information services. Is it possible for the current copyright law to enhance a sustainable global information society, and in the same time to maintain the balance between rights users and right owners?

In this paper, we focus upon the role of libraries in the new academic environment in combination with the current copyright law and especially the copyright exceptions and limitations. How essential and common academic libraries functions and practices, such as: digital deposit, long-term preservation, library and interlibrary lending, copying for research or for blind people, can be supported by both intellectual property law and librarians' deontological principles as well?

1. Introduction

Libraries have always been the reservoirs of expressed knowledge, the curators of human intellectual creation, the channels to information and the gateways to disseminate all the above to the public. New technologies have transformed libraries not only in the way they organize information and provide access to it. Nowadays, libraries' collections include not only print material, but also digitized (i.e. formerly print) or electronically born material. New technologies and more specifically information technologies (IT) have changed not only their collections, but also the way libraries operate and serve their users. Today's libraries are digital, virtual and with no physical borders as they offer their services online without the need for the user to physically visit the libraries' premises. According to Ridley [Ridley, 2005], "new technologies, IT and digital libraries are not just tools to be learned and used. IT is an environment in which we operate and are immersed. IT is an ecology".

However developed, today's libraries still rely on traditional concepts and functions in order to serve their users. Namely, they have to:

- a. Acquire (either by purchase or through licensing) and organize their material effectively in order to facilitate access to it.
- b. Make their material available to users through circulation and inter-library loan services and more recently, by providing remote online access to it.
- c. Preserve their material, i.e. documented intellectual creation, for the longest possible period of time.
- d. Customize their services to accommodate current needs in information seeking and provision.

Almost all of the above library functions are related to and influenced by intellectual property legislation. In order to operate, libraries provide reproduction services to their users, loan their material for a certain period of time, co-operate with other libraries in resource sharing systems (inter-library loan), transform their material for

preservation or digital curation purposes and for facilitating access to it, and more recently, they are getting involved in producing their own -digital in most cases-material.

Librarians and information professionals know that Copyright compliance is both a legal and an ethical issue. In their activities, they need to ensure that they remain on the right side of the law and that their conduct is ethical [Pedley, 2007]. The principles of respecting the user's right to access to information and simultaneously, to preserving the creator's or copyright holder's rights, are described with clarity in many librarians codes of ethics [Strakantouna, 2010].

Libraries both in conventional and in digital environments, in the process of material's management and the rendering of services, often face many issues related to copyright that mainly concern two exclusive and absolute rights of the authors. The right of the exploitation of a work (property right) and the right to protect the author's personal bond with his/her work (moral right) which according to copyright (art 1. par. 1 of the Greek Copyright Law 2121/1993), are automatically granted to the authors. The right of the exploitation of a work for social cultural and educational policy reasons in all national legislations, international treaties and European Union Directives is subjected to exceptions/limitations that concern its content and its extent. Except from the term «limitations» the term «exceptions» is often used either accumulatively or alternatively. The first one implies the unauthorized but paid use of a work and the second, the free use without remuneration. In spite of the difference in the various conceptual approaches, those two terms are synonymous and concern concrete legislative regulations on the extent and the content of the property right [Kallinikou, 2007].

Copyright exceptions and limitations are the tools libraries are offered to use in order to continue providing their services, supporting innovation, creativity and economic growth in all parts of the world. However, how easy it is for today's libraries to comply with copyright rules which seem to get stricter and stricter through, new copyright, or copyright-related trans-national conventions, powerful trade agreements that address the use of copyrighted products, tightly binding access licenses, and sophisticated digital rights management (DRM) tolls that restrict access to resources and prevent circumvention of digital material even if they are purposed to facilitate preservation activities or to provide access to people with disabilities?

In the 21st century there is a great necessity to re-examine copyright and also an immediate need for corresponding action among all the interested parties worldwide. Exceptions/limitations and other public interest, considerations should be more explicitly addressed within the global framework and should be viewed as public rights that balance the rights, between authors and users, and between private and public interest. The balance between rights and exceptions/limitations in copyright is not an easy matter, particularly in light of ongoing technological developments and shifting of social and economic expectations, with respect to users and authors [Okediji, 2006].

2. Characteristics of the new scholarly environment

2.1 Socio-economic conditions

Access to and management of information is an imperative in today's society. Investing in information consists one of the most profitable economic activities. Indeed, information consumption tends to be directly or indirectly involved in every day life. Yamazaki [Yamazaki, 2007] claims that, even when selling a T-shirt (a simple textile product), designers' fee or royalties on copyright make the 90-95% of the cost of the T-shirt. The prime cost of the cloth is estimated just at 5-10%. Such estimations have great implications to the work of libraries. Considering that libraries' work involves acquiring, managing and disseminating information, it can be assumed that intellectual property (IP) costs for libraries are enormous.

Commodification of information is indicated by many authors as a principal economic trait of the current era. Copyright industries are considerable economic powers of today. In Britain, they represent at least 7% of GDP (Gross Domestic Product) [Taylor, 2007]. The British book publishing industry yearly generates at least 5 billion GBP (British pounds) and journal publishing another 1 billion GBP. The numbers are analogous in most developed countries of the world where intellectual production is proliferating.

However, it has to be taken into account that a great amount of the income copyright industries are making comes from institutions such as universities and libraries i.e. from public funding. It is worthwhile to refer to an estimation made by the Society of College, National and University Libraries [SCONUL in Copyright and Research in the Humanities and Social Sciences, 2006]. The estimation concerns only the administrative costs related to delays and difficulties in clearing rights that costs higher education institutions 30 million GBPs per year at a minimum. Furthermore, the contribution of copyright industries to the public welfare is strongly questioned as copyright laws protecting the economic interests of creators and rights owners restrict public access to the majority of copyrighted works. For these reasons, authors like Morrison [Morrison, 2008], speak of the existence of two opposing social components, the "knowledge economy", and the "knowledge society", and for many, the liberation of information through open access initiatives and the decreasing of the copyright term which will transfer huge quantities of works into the public domain, are sought as the only chances for the advancement of democracy, culture, and learning.

2.2 Education and research

The role libraries are playing in education is a given in today's societies where the use of intellectual products is included in all curricula and the existence of well equipped and organized libraries is a prerequisite for the accreditation of educational institutions. In most cases national copyright legislations provide for exceptions in the use of works for educational and teaching purposes. A good example of a well implemented copyright framework for the support of teaching and education is the US Technology, Education and Copyright Harmonization (TEACH) Act which allows nonprofit academic institutions to use copyright protected material without the need to pay royalties or obtain permission from the owner. Although, there is the condition that the material should be reasonably used in terms of quantity (only some portions)

and time (only for a specific period of time), the TEACH Act helped US academic institutions to support their educational programs with the appropriate bibliographical resources and provided students with the necessary access to important information.

However, the conditions change if the educational program is a paid one, i.e. students pay to attend it. In this case, the economic benefit that such a program may offer to the university becomes imperative and thus, the use of copyrighted material may be considered as an infringement of copyright. At least this was the case in the print world, because in the new academic environment new forms of education and teaching are emerging such as distance education or e-learning which require the whole of the educational material to be supplied in digital form and therefore, reproduction of copyrighted material is more intensively required than before.

Education is closely bound to, if not identical with, research, as a great part of research is conducted within academic institutions. Research involves the production of new ideas and therefore, the consumption -in terms of accessing, studying, and re-using- of copyrighted works. There are not many exceptions or limitations in the copyright law specifically concerning the use of materials for research purposes as such an activity may fit in the general exception of “use in private study”. However, the British Academy [Copyright and Research in the Humanities and Social Sciences, 2006] states that although, “there is no statutory definition of research, or clarity on what differentiates the use of otherwise copyright material in research from its use in private study, or in criticism, or in review”, private study might represent only the consideration of existing ideas and not the invention of new ones as is the purpose of research. The same authority goes on by claiming that research in many cases is distinguished from research publication, but, “research without the publication of results is barely if at all distinguishable from private study and there is little or no public benefit in the production of new ideas unless they are made publicly available”.

The problem with research is that it may be characterized as “commercial” if funded by private funds and therefore, no copyright exceptions and limitations should be applied in commercial research study and publication. However, the majority of research involves public funding either in the form of financing or in the form of providing research equipment (installed in public institutions) or information resources (such as those held in public libraries), and the lack of access to its results could become a serious barrier to scholarship and social development in general. For these reasons, many national research institutions, such as the National Institution of Health in the US or the Research Councils in UK have issued mandates that demand publicly funded research outcomes to become freely available either immediately or after a certain period of time that doesn't exceed twelve months from the date of their first publication.

2.3 Digitization

The ease of reproducing works with the help of new technologies (in the beginning, with the use of copying machines, and more recently, with the digitization of print material and the transmission via the Internet of both digitized and electronically born content) has alarmed creators and copyright owners. The situation has been aggravated with the massive digitization projects undertaken recently by libraries, but also private enterprises like Google.

Concerning libraries, which are the focus of this paper, it has to be acknowledged that most copyright legislations give libraries the right to copy the material they hold in their collections for archival and preservation purposes. This exception to the right of reproduction usually involves certain preconditions in order to be valid, such as: the material must be out of print and out of stock and cannot be re-purchased easily and in an affordable price. However, archival or preservation digital reproduction is not the goal in the current technologically advanced era. The goal is: easy and immediate access to print or –preferably- digital material. Therefore, according to the European Bureau of Library, Information and Documentation Associations [EBLIDA, 2007], there is a need that the contents of libraries are digitized in order to enhance their availability for research, education and other non-commercial and commercial purposes. However, such a venture is not feasible within the current copyright environment especially when one considers that about 70% of all library materials are under copyright protection.

An important issue which comes to the fore in digitization projects and in the access to the digitized cultural content is the so-called orphan works phenomenon. Orphan works are the works which the term of protection hasn't expired but the creator or the copyright owner cannot be identified or located. The questionable copyright framework of these works, a huge number of which is located in libraries, archives and museums, prevents many digital libraries -among them the European Digital Library- from achieving their goals [i2010: Digital Libraries Initiative]. In order to find a solution for this kind of works, initiatives are taken both at European and global level (Commission of the European Communities, Green Paper, Copyright in the Knowledge Economy, Brussels, 16.7.2008, COM (2008) 466/3). Some countries, including Denmark and Hungary, have already established limitations in the use of such works while the creation of a global digital database, is planned, which will provide information on how to handle the various cases of orphan works.

2.4 Public interest, access to information and knowledge, and fair-use:

The library community recognizes both the need of creators to be rewarded for their work and for creative works to be protected by the support of copyright, as well as the users' right to access to information and knowledge. Both copyright and research and information rights, are protected from national, European and international laws, and are closely associated with human personality and the cultural life of each and every region.

There are several conditions under the copyright legislation which prevent the public from freely accessing copyrighted material. Basically, copyright legislation provides for the protection of creativity when expressed in any form of material and for the protection of creators against the abuse of their works. However, in most legislations there also exists the counterbalancing idea of promoting new creativity as well as the progress of science. This clearly indicates that copyright laws must not only work for the protection of creators or copyright owners, but also for the good of the society. This is the reason why limitations to intellectual property rights and copyright exceptions are issued, so that certain levels of access are allowed to the public.

In the system of copyright these exceptions and limitations are also known as fair-use. As stated in a Public Policy Report issued by the Brennan Center for Justice [Heins and Beckles, 2005], fair-use is at risk today, because aggressive and sometimes

irrational claims by copyright owners cause many people to give up their fair-use rights. In a research project conducted by the same institution, the clear conclusion was that artists and scholars have great interest in, but also, great confusion about, fair-use. A lot of scholars strongly complained about a copyright regime that prevents access to copyrighted material if the owner refuses permission or asks for very high charges.

In another report, a white paper issued by the Berkman Center for Internet and Society [Fisher and McGeeveran, 2006], four obstacles to educational use of content were indicated: a) unclear or inadequate copyright law relating to fair-use and educational use, b) extensive adoption of DRM-like technology to lock up content, c) practical difficulties in obtaining rights, and d) undue caution by copyright owners. All the above imply an urgent need for community advocacy and legal assistance in dealing with publishers, distributors, and other cultural gatekeepers, and libraries -as mediators between copyright owners and the public- have a central role in this issue.

According to the International Library Associations [eIFL, IFLA and LCA, 2009], the use of technological protection measures reduces the access to information and abolishes important national policies that were created for the public benefit. The World Intellectual Property Organization (WIPO) Copyright Treaty permits exceptions, but few countries have enacted exceptions for the benefit of libraries and library users. In the EC such a regulation is examined under the light of article 6 paragraph 4 of the Directive 2001/29 as it will be analyzed bellow.

2.5 Scholarly communication and open access

Scholarly communication stands in the heart of scientific evolution. According to a definition given by the UK Consortium of University and Research Libraries (CURL) and SCONUL [CURL and SCONUL in Ayris, 2005], scholarly communication is an umbrella term that “covers the authoring, publishing (in a broad sense), and reading of information produced by members of the academic community for teaching or research. ‘Information’ in this context may be in a variety of formats.” A central idea within scholarly communication is the re-using of scholarly publications for further developing science and stimulating new inventions. Academics are both authors and consumers of copyrighted material and in this sense they are concerned with the rightful use of their works, but at the same time they seek the highest possible dissemination and re-use of their publications by their peers.

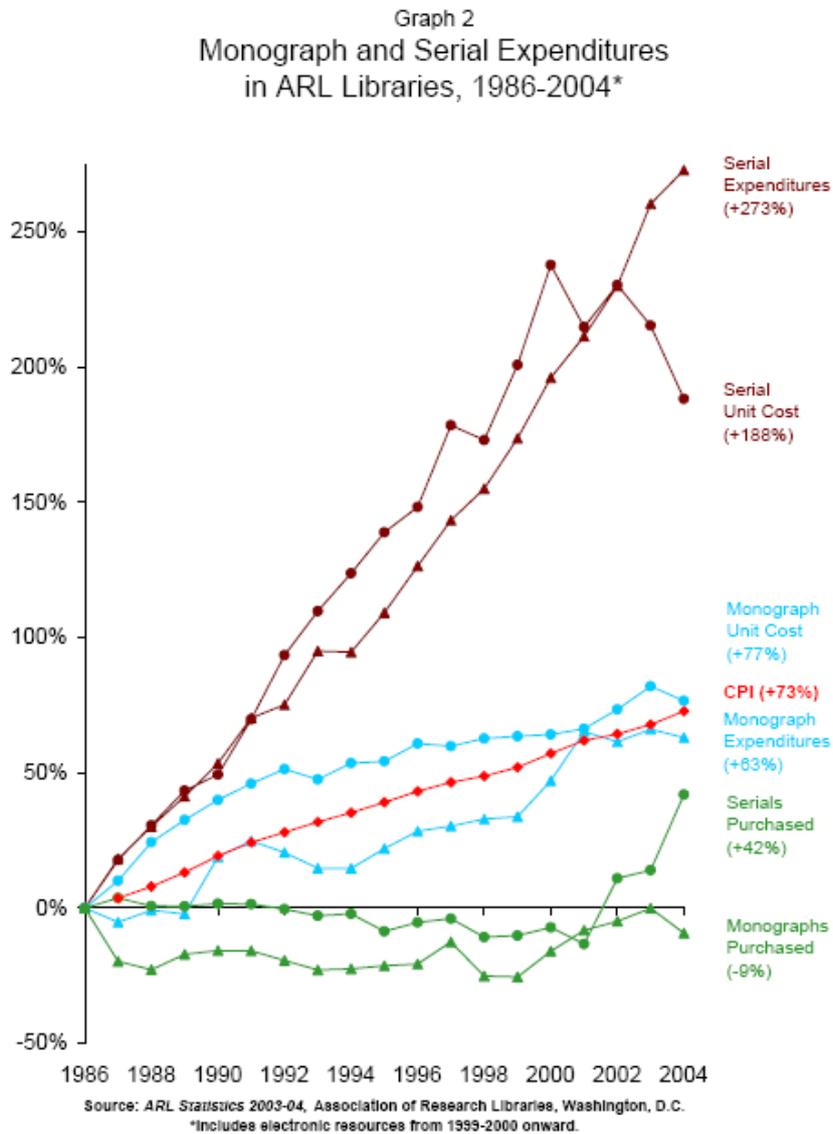
Open access is an initiative that appeared in the beginning of the 21st century and stands for the free access and availability of peer reviewed research publications to the public. “Open access literature is digital, online, free of charge, and free of most copyright and licensing restrictions. What makes it possible is the internet and the consent of the author or copyright-holder” and for this reason “it does not require the reform, abolition or infringement of copyright law” [Suber, 2010]. Open access is gradually gaining space among academics, researchers and librarians and a major reason for its success is that it refers to scholarly publications which do not represent a highly profitable and commercially exploitable intellectual product as music or movies.

There are two primary ways for exercising open access: a) through Open Access archives or repositories, which do not perform peer review, but simply make their

contents freely available to the world, and b) through Open Access journals, which perform peer review and then make the approved contents freely available to the world. Many academic publishers oppose to open access widespread adoption emphasizing on its negative impact on the relative economic sector (scholarly publishing industry). However, there is no reliable data yet to prove that such an impact exists. On the contrary, open access advocators stress the fact that the real loss comes from not moving to open access, as lack of open access may result in a “constant and huge loss of efficient communication between scholars, and in particular the stifling of innovative interdisciplinary research and cross-discipline synergy of research” [Adams, 2007].

For many years, continuous and irrational increases in prices of scholarly books and journals in combination with shrinking library budgets due to financial constraints have driven libraries to reduce the number of their subscriptions and books purchases at a minimum, in many cases, level. As shown in Figure 1, from 1986 to 2004, the price of journals rose by 188% and that of monographs, by 77%. Reduce of subscriptions and monograph purchases had a severe impact on the amount of resources available to library users. As a response, libraries became pioneers in adopting the open access initiative as they were looking for less costly alternatives in order to continue to provide information services to their users. In this context, many Academic Libraries operate Institutional Repositories (IR) where scholarly publications produced by academics belonging to a University are deposited and are openly available to the public. Open access to deposited material depends on the rights which authors can retain in order to shelf-archive their works either in personal web pages or in their institution’s IR. The role of copyright in the operation of such IRs is obvious.

(Figure 1)



2.6 Libraries and the development of new services

With so many copyrighted works in their collections, libraries need to become experts in managing the use of their holdings in a lawful way. The role of librarians as a link between the producers of copyrighted material and consumers is very important. This role is twofold. On the one hand, librarians have to protect IP rights and reassure the legitimate use of print and electronic works they hold in their collections. On the other hand, librarians need to promote the right of people to access information and use it as a basis either for the creation of new works or for individual information needs. To do that, librarians need to inform people about the exceptions and limitations existing in copyright legislation and educate them on how to make the best and legitimate use of them.

Within the new academic environment characterized by the advancement of open access to scholarly publications, librarians' educational and safeguarding role has been further expanded. Now, they are becoming the authors' consultants on how to publish in a way to achieve the highest levels of visibility and accessibility to their publications, how to self-manipulate the use of their works by implementing new licensing methods, such as creative commons, and how to advocate for the preservation of the fair-use doctrine in the digital world where easiness in controlling access to intellectual works can result in its shrinking.

3. The legal Framework

3.1 DIRECTIVE 2001/29/EC of the European Parliament and of the Council “on the harmonisation of certain aspects of copyright and related rights in the information society” and the Greek Copyright Law

Copyright has an exclusive and absolute character, but is subject to limits that are determined by the concept of the work or are explicitly prescribed by law as to the term and extent of the right. The scope of copyright comprises works as intangible goods, irrespective of the material on which the work is incorporated. The main features of the work are form and originality. The idea is not protected by copyright, unless it takes up a specific form. Copyright can only protect the form, and both, by national legislation and the International Berne Convention (article 2, §1). Copyright does not protect individual bibliographic citations, facts and headlines; although a collection of them would be protected by copyright and /or database right (Norman, 2004). It should also be noted that protection does not extend to official texts that express the exercise of state power, especially legislative, administrative or judicial texts, not to the expressions of folk tradition, news and simple events or facts, unless any of them can be included in the category of compilations or derivative works.

Apart from the conceptual limitations of copyright, the law imposes restrictions on the length of the right. According to the community *acquis*, the length of protection under national law is determined on the basis of the lifetime of the author and seventy years after his/her death. This length applies to both the moral and the property right. On expiry of this period, the work falls into the public domain.

And while the meaning of “fair-use” applies within the copyright system where certain indicative cases are provided which may be included within the meaning of “fair” and each case is judged ad hoc by the European system of IP, the limitations are numbered exclusively by the law, are applied exceptionally and have a narrow scope of application. In order to apply them, the jurist is called upon to abide by the procedure of “the three-step-test”, that is to say, to apply the limitations only: a) in certain special cases; b) if there is no conflict with the normal exploitation of the work; and c) if there is no unreasonable prejudice of the legitimate interests of the author/right-holder. These criteria have been picked up as the bases for exceptions to rights in both the TRIPS (Trade-Related Aspects of Intellectual Property Rights) Agreement and the WIPO Copyright Treaty (WCT).

“The three-step-test”, substantially, the article 9(2) of the Berne Convention, is regarded as the international yardstick for exceptions to exclusive rights. It is framed as a general provision that establishes the criteria against which any exception to the

reproduction right is to be assessed. The proper interpretation of article 9(2) is a matter of some importance to national copyright legislators and policy makers, who are striving to fashion appropriate exceptions to protection in both the digital and non-digital environments [Ricketson, 2002].

The exceptions/limitations to the proprietary right relating directly or indirectly to libraries in the Greek legislation are provided in sections 18 to 28C of Law 2121/1993 as these apply after the incorporation of the European Directives (art. 5 par. 5 Directive 2001/29), the International Berne Convention (art. 9 par. 2), the TRIPS Agreement (art. 13) and the WIPO Copyright Treaty (WCT art. 10).

The provisions in relation to libraries are more detailed in legal systems outside the EU. In the USA for instance, the reproduction of works is allowed within the framework of non profitable libraries and archives, for various purposes, as for instance, private study and research, the restoration from theft or the maintenance in cases of defacing (Units 107 and 108 of the American law) [Crews, 2008].

The number of copies allowed is also expressly mentioned, as well as the means of reproduction. Furthermore, there is a special provision for the last 20 years of the duration of protection, while the meaning of “fair-use” is very important. In the British Copyright, Designs and Patents Act 1988 (CDPA, 1998), there is a distinction made on whether the use is by a user of the material of the library or by the librarian.

In Directive 2001/29/EC “on the harmonisation of certain aspects of copyright and related rights in the information society” there is a closed catalogue of exceptions and limitations of which the only mandatory exception for member states is the one relating to temporary acts of reproduction within the use of networking applications such as the Internet. The remaining limitations are permissible exceptions and the member states chose whether they will incorporate them in their national legislations or not.

The limitations which refer to libraries and generally to research and education relate to:

- (a) Special actions of reproduction carried out by libraries, educational establishments, museums or archives available to the public, which do not aim at any financial or commercial benefit.
- (b) Uses with presentation or disposal for the purpose of research or private study through specialised terminals within the areas of the establishments mentioned above, provided they relate to works which do not fall under terms of sale or license and which are provided in their collections.
- (c) Use as an example only during teaching or scientific research provided it is justified by the pursued non commercial purpose.
- (d) Presentation of passages with the purpose of exercising criticism or book presentation.
- (e) Uses for the benefit of persons with special needs directly connected to the disability and which do not have a commercial character.

3.2 Reproduction right

The Greek legislator chose not to use the possibilities afforded to it by article 5 (Exceptions and limitations) of Directive 2001/29, a fact criticized by librarians and

other beneficiaries. In relation to actions of reproduction within the framework of libraries, the Greek legislator could provide an exception with a more analytical content, taking into consideration their social function and not-for-profit nature. In any case, the actions of reproduction carried out within libraries and in particular those of the Public Educational Institutions are actions of reproduction for the private use of the person carrying them out (No. 18, Law 2121/93) there is no interaction of staff and the liability (as regards the scope of the reproduction) lies with the user him/herself. Actions of reproduction carried out by the staff of such libraries within the framework of rendering services also fall under this category, provided they are reproductions of passages, relate to a small part of a work, are executed for the facilitation of private needs of the users and do not have any financial goals.

According to art. 5, par. 2 of Directive 2001/29, member States may provide for exceptions or limitations to the reproduction right provided for in Article 2, in specific cases among them “*in respect of specific acts of reproduction made by publicly accessible libraries, educational establishments or museums, or by archives, which are not for direct or indirect economic or commercial advantage*”. The exception provided by the Directive for special actions of reproduction in museums, libraries etc. in effect is a particularisation of the more general exception for private use, considered necessary by the European legislator simply for the purpose of clarity. During the incorporation of the Directive in the Greek legal system, the inclusion of this exception in the amendments was not considered necessary exactly because there was and still is the general exception of reproduction for private use. That is to say, it was considered that the need referred to in exception 5.2 point c of this Directive was covered by the general section 18 of Law 2121/1993. However, because unjustified demands for payment of rights for this use have occurred, it is necessary now to incorporate the exception of 5.2 point c of the Directive, so that there is no longer any doubt about the legality of the actions of reproduction within the Libraries of the Public Educational Institutions. In our view, Law 2121/1993 must include an expressed provision for the libraries of the Public Educational Institutions of all levels and to refer exclusively to non profitable use.

Furthermore, the obligation of such libraries to post special notices within the areas of reproduction informing the users about the reasonable use of reproduction for personal use must be mentioned, ensuring firstly that the procedure of three stages is maintained, secondly that the spirit of the existing section 18 of Law 2121/93 is being followed while at the same time the ambiguity of law created by the lack of reference to certain categories of users is being lifted, and thirdly that the practice of certain states such as Spain (section 37(1) of the Spanish Law on Intellectual Property as amended by law No. 121/000044) or Portugal (section 75(2) of the Portuguese law No. 108/IX, as amended by law No. 50/2004) is applied but with the additional limitation of application only to a limited category of institutions such as that of Libraries of Public Educational Institutions of all levels.

According to art. 5, par. 3 of Directive 2001/29, the use “*by communication or making available, for the purpose of research or private study, to individual members of the public by dedicated terminals on the premises of establishments referred to in paragraph 2(c) of works and other subject-matter not subject to purchase or licensing terms which are contained in their collections*” may be permitted. In our view the Greek legislator must clearly adopt the said exception for the Libraries of Public

Educational Institutions. In order the law to evolve in parallel with contemporary technology and practices of remote access, the presentation or disposal of works must be allowed for all areas of educational institutions of all levels (classrooms, offices of teaching personnel) and must not be limited only to the area of the libraries of such institutions.

If the above exceptions are not adopted by Law, for the Libraries of Public Educational Institutions of all levels, then, apart from the financial issue of paying further rights to the creators of the works (or the collective management organizations –CMO- representing them) for the actions of reproduction and the lending of material by the particular libraries, the issue of previous granting of a license for such actions of reproduction and borrowing by the creators or CMOs also occurs. It is understood that it is impossible for the Libraries to handle such workload with the minimal staff they have, and the delays in securing such licenses shall result in any endeavour to satisfy the demands of a user being futile.

According to art. 21 (Reproduction for teaching purposes) of Law 2121/1993 *“It shall be permissible, without the consent of the author and without payment, to reproduce articles lawfully published in a newspaper or periodical, short extracts of a work or parts of a short work or a lawfully published work of fine art exclusively for teaching or examination purposes at an educational establishment, in such measure as is compatible with the aforementioned purpose, provided that the reproduction is effected in accordance with fair practice and does not conflict with the normal exploitation”*.

In our opinion, future amendments of Law 2121/93 have to allow the reproduction of the digital content (born digital or digitized) for teaching purposes. Furthermore, it must be expressly mentioned that the exception includes contemporary forms of supporting actions to teaching, such as coursepacks and e-reserves. Additionally, new methods of education, such as distance education and e-learning have also to be supported. These new educational methods are an emerging contemporary trend of huge practical and educational value. Distance learning cannot be legally covered by the existing status quo of Law 2121/1993, except via a private agreement. However, within the framework of WIPO, the discussion for a possible exception relating to distance learning continues and may be introduced in Greece via article 21 of Law 2121/1993. At the 17th Session of the WIPO Standing Committee on Copyright and Related Rights (SCCR) that took place in Geneva in 2008, the Committee welcomed the forthcoming study on exceptions and limitations for the benefit of educational activities, including distance education and the trans-border aspect thereof, in particular for developing and least developed countries.

According to art. 22 (Reproduction by Libraries and Archives) of Law 2121/93 *«It shall be permissible, without the consent of the author and without payment, for a non profit-making library or archive to reproduce one additional copy from a copy of the work already in their permanent collection, for the purpose of retaining that additional copy or of transferring it to another non profit-making library or archive. The reproduction shall be permissible only if an additional copy cannot be obtained in the market promptly, and on reasonable terms»*. Therefore, the review of the existing legislation is deemed necessary in order to evolve in parallel with the contemporary technological demands relating to electronic/digital material, long term

preservation of which may need: multiple archival copies in electronic form (master record/derivative copies), digital substitutes, mirror servers and different storage locations for securing maintenance of digital objects. Regular changes of the format of a digital object are constantly needed in order for it to continue being accessible depending on the technological evolutions etc. [Fragkou and Strakantouna, 2008].

3.2.1 Reproduction for the benefit of the blind

For the visually impaired persons, or persons with other disabilities, there are many barriers to access knowledge and copyright is among them. The problem of access to knowledge for persons with disabilities is discussed at national and international level and many organizations such as WIPO and UNESCO are dealing intensively with the subject in order to find solutions. In this context various proposals to expand access to copyrighted works by persons who are blind or have other disabilities have been suggested [Sullivan, 2006; SCCR/19/3/2009; KEI, 2011].

In the continuing dialogue among the European Union stakeholders a Memorandum of Understanding (MOU) was signed on access to works by people with print disabilities in order to: a) increase the access to works for people with print disabilities and, in the meanwhile, ensure that works converted into Braille or another accessible format, are available in other EU Member States through a network of Trusted Intermediaries, b) cross-border transfer in the EU of accessible copies created under copyright exceptions or under licenses, through a network of Trusted Intermediaries and under appropriate conditions is supported, and c) specific licenses allowing the cross-border transfer in the EU of licensed accessible copies, through the network of Trusted Intermediaries is achieved.

There is an indirect relation between libraries and the regulation allowing the reproduction of a work for the benefit of the blind or the deaf-mute for uses linked directly to their disability and which do not have a commercial character, to the degree needed due to the disability. In Greece, the provision of the Copyright Law 2121/93, concerning the exception established for the benefit of blind and other disabled is the article 28A (Reproduction for the Benefit of Blinds and Deaf-mute) that provides that *“The reproduction of the work is allowed for the benefit of blinds and deaf-mute, for uses which are directly related to the disability and are of a non-commercial nature, to the extent required by the specific disability. By Ministerial Order of the Minister of Culture the conditions of application of this provision may be determined as well as the application of this provision for other categories of people with a disability”*. This provision was legislated in harmonisation to the Directive 2001/29 (art. 5 par. 3-b) and allows the determination of the limits of its application by decision of the Minister of Culture, as well as its extension to other categories of persons with disabilities.

In 2007 with the Ministerial Order (ΥΠΠΟ/ΔΙΟΙΚ/98546) «reproduction of copyrighted work for the benefit of the blind and the deaf-mute and extensions of the arrangement to other categories of people with disabilities» the Greek state tried to facilitate their access to information by establishing an obligation for the publishers, to deliver to the competent intermediary bodies the files of the works to be reproduced in electronic format [Papadopoulou, 2010].

3.3 Public Lending

The rental and lending legislation has affected library services and the lending of copyrighted books, artistic materials, CD-ROMs, computer software etc. Authors, artists, dramatists, composers, performers and producers of sound and video recordings, as well as producers and principal directors of films, have the exclusive right to authorize or prohibit rental and lending of their works.

According to the current European law, Public Lending can be defined as the act of “*making available for use, for a limited period of time and not for direct or indirect economic or commercial advantage, when it is made through establishments which are accessible to the public*”. This is the definition provided by article 2.1 b) of the Directive 2006/115/EC “on rental right and lending right and on certain rights related to copyright in the field of intellectual property”.

According to the PLR (Public Lending Right) International Network, 29 nations now have working PLR systems. At least 23 other countries have PLR in their legislation but have still to take the next step towards establishing operational systems. The latter group includes countries as widely scattered as: St Lucia, Samoa, Burkino Faso, FYROM (Former Yugoslavian Republic of Macedonia) and Mauritius. The implementation of the PLR is a very complex issue and the most common loan-based PLR became practicable when the invention of modern sampling and computer processing made it so [Strakantouna and Kikkis, 2010].

At European level, the PLR has been harmonized in 1992 with the Directive 92/100/EEC. According to art. 5 of the Directive 92/100/EEC and to art. 6 of the latest Directive 2006/115/EC: *a) Member States may derogate from the exclusive right provided for in Article 1 in respect of public lending, provided that at least authors obtain remuneration for such lending, b) Where Member States do not apply the exclusive lending right provided for in Article 1 as regards phonograms, films and computer programs, they shall introduce, at least for authors, a remuneration and c) Member States may exempt certain categories of establishments from the payment of the remuneration referred to in paragraphs 1 and 2.* In spite of these abilities the Greek legislator does not make full use of the derogation from the exclusive right. This fact was criticized not only by the library community but also by the law scientists (Marinos, 1998; Papazoglou, 2006). Therefore, in Greece the PLR maintain an exclusive character, and libraries and institutions that lend copyrighted works, in order to be legitimate, have the obligation to ask permission from the creator or the copyright holder. The employment of PLR is not regulated by law or other special administrative order but has been left to the creators and the collective societies [Kallinikou, 2007].

In our opinion the Greek legislator must take advantage of the possibilities given by the Directive and adopt with clarity an exception for Libraries of Public Educational Institutions of all levels for the promotion of education and learning. It is important to point out that such a provision serves a number of conditions:

- (a) It is within the limits of article 6 of Directive 2006/115EC.
- (b) It is in accordance with the decisions of the Court of Justice of the European Union, because while it uses the possibility of nominating certain institutions exempted from the payment of right according to article 6 of Directive 2006/115

EC, it refers to a very limited and specific category of institutions, that is to say, the Libraries of Public Educational Institutions and not all Public Libraries. As a consequence, it is in accordance with the decisions of the Court of Justice of the European Union (e.g. The case of the Commission of Europe v. the Belgian Republic C-433/02 or the case of the Commission of Europe v. the Portuguese Republic C-53/05).

- (c) It is an expression of the public and free character of education in Greece and it is in accordance with the mission of the Libraries of Public Educational Institutions of all levels [Fragkou and Strakantouna, 2008].

Furthermore, the low use of libraries and library services in Greece (frequency of library visits, circulation of library material), as indicated in the 3rd Pan-Hellenic Survey of Reading Behaviour and Cultural Practices, conducted by the National Book Center of Greece in December 2010, elevates any concerns that authors, rights holders and/or publishers might face considerable financial loss from low books sales caused by the public lending services offered by libraries.

3.4 Towards a common framework for limitations and exceptions

Many studies about models and practices concerning copyright exceptions and limitations in the digital environment have been developed. All these studies determine that exceptions and limitations for libraries are needed in order to promote creation, innovation, and dissemination of knowledge, and they suggest that a minimum agreement on core exceptions and limitations is required in all national legislations. Between years 2003-2010 the WIPO SCCR have been studying and illustrating most of these modes and practises that lay emphasis to the issues of visually impaired, libraries and archives, educational activities etc. Within this context, in 2008, Kenneth Crews, commissioned by WIPO, published his “*Study on Copyright Exceptions and limitations for Libraries and Archives*”. The study is the first comprehensive overview of statutory provisions in national copyright laws of WIPO Member States for the benefit of libraries and archives. According to this study, from the 184 WIPO countries, 128 have at least one statutory library exception, most of the countries have multiple statutes addressing a variety of library issues and 21 countries have no library exception in their copyright law [Grews, 2008].

The outcomes of the 21st Session of the WIPO SCCR, in November 2010 were characterized by IFLA as “Unprecedented opportunity for libraries and archives”. This was because at this meeting WIPO agreed on a work program that could lead to an international treaty involving mandatory exceptions for the benefit of users of copyrighted works, heralding a new era for copyright in the 21st century. More specifically, they agreed for a work plan until the end of 2011, concerning copyright exceptions and limitations for libraries and archives, educational, teaching and research institutions, and persons with other disabilities [IFLA, 2010].

The international library community promotes the necessity of adoption of more copyright exceptions and specific provisions in the copyright law. In May, IFLA announced a statement on copyright exceptions and limitations for libraries and archives. Through this statement it asks WIPO to take actions so that member states adopt in their laws provisions according to the following specific principles helping the effectiveness of libraries’ and archives’ activities:

- a) For preservation purposes libraries and archives should be permitted to make copies of published and unpublished works in its collections, including migrating content to different formats.
- b) Libraries and archives should be able to support interlibrary loan and document delivery, directly or through the intermediary library irrespective of the format and the means of communication.
- c) Reproduction and copying individual items for or by individual users should be permitted for research and study and for other private purposes.
- d) A library should be permitted to convert material from one format to another to make it accessible to disabled persons. So the exception for them should apply to all formats to accommodate user needs and technological advances.
- e) A library or educational institution should be permitted to make copies of a work in support of classroom teaching.
- f) A general free use exception consistent with fair practice ensures the effective delivery of library services.
- g) Legal deposit laws and systems should be broadened to include works published in all formats allowing copying or downloading of those works.
- h) An exception is needed to resolve the problem of orphan works, where the rights holder cannot be identified or located.
- i) Copyright term consistent with the Berne Convention and the TRIPS Agreement, the general term of copyright should be the life of the author plus 50 years.
- j) Provisions that should be permissible for libraries and their users to circumvent a technological protection measure for the purpose of making a non-infringing use of a work.
- k) Contracts should not be permitted to override exceptions and limitations. The goals and policies providing for exceptions are important statements of national and international principle and should not be varied by contract.

Finally there should be a limitation on liability for libraries and library staff who act in good faith, believing or having reasonable grounds to believe, that they have acted in accordance with copyright law [EIL, IFLA, WIPO SCCR, 2009].

4. Epilogue

In order to find a balance in the needs of libraries and archives, creators, copyright holders and users, moderate forms of cooperation such as codes of conduct, protocols of cooperation, agreements, or even collective agreements are being tried. However, the existence of a suitable legal framework which balances the interests of the beneficiaries and the public is considered of paramount importance, especially for organizations serving educational, research and cultural purposes.

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