Limitations and Exceptions to Copyright and Neighbouring Rights in the Digital Environment: An International Library Perspective

Summary:

- The International Federation of Library Associations and Institutions represents the interests of libraries and information services as well as the users of such services worldwide.

- Libraries are major purchasers of information in print, analogue and digital formats and wish to ensure lawful, equitable access to knowledge contained in such works.

- IFLA believes that the economic rights of information providers must be balanced with society's need to gain access to knowledge and that libraries play a pivotal role in this balance.

- The digital environment has the potential to support access for all members of society, especially those in developing countries and in disadvantaged groups, but this will not happen unless intellectual property laws continue to be balanced with effective limitations and exceptions.

- IFLA believes that exceptions and limitations to copyright, which exist for the public good, are being jeopardized by the increased use of technological protection measures and licensing restrictions.

Introduction

The International Federation of Library Associations and Institutions welcomes UNESCO's proposal to study the use of limitations and exceptions to copyright in the digital environment. As the main voice speaking on copyright on behalf of the international library and information profession as well as our users in education, business and industry, the health sector, the voluntary and public sectors, IFLA believes that the economic rights of information providers must be balanced with society's need to gain access to knowledge. IFLA is concerned that the increased use of licensing and technological protection is distorting the balance toward commercial interests and away from information users. This trend affects information users everywhere, but it has an even greater effect on those in developing countries.

As the world increasingly makes use of digital and online technologies to create and distribute knowledge and culture, questions of digital copyright become increasingly important. If humanity is to have as wide as possible access to its heritage in the online world, it is vital that the rules which govern such access (principally intellectual property laws) are considered fully and properly by a wide range of affected stakeholders. UNESCO's proud tradition of

promoting the creation and dissemination of the world's cultural heritage makes it well suited to this task.

What is copyright?

Before any consideration of 'fair use' limitations upon copyright in the digital environment, it is first necessary to consider what copyright is and why balance is so important.

Copyright can be defined as a person's exclusive right to authorize certain acts (such as reproduction, publication, public performance, adaptation etc.) in relation to his or her original work of authorship. The creator of the work typically owns the copyright, at least initially. However, copyright is often sold or assigned, in whole or in part, to a commercial publisher, a filmmaker, a recording studio or to someone else who will exploit the work commercially. As a consequence, copyright often benefits commercial interests more than individual authors.

Copyright law has long emphasised that copyright protection does not exist for its own sake but rather to serve the public interest. To take one prominent example, the Constitution of the United States declares that the purpose of copyright in that country is: 'To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries.'[1] Similarly, the world's first copyright law, the English Statute of Anne (1710)[2] stated that its purpose was to 'encourage learning.'

The greater public interest is served in two ways: firstly, by giving authors an incentive to create; and secondly, by encouraging the dissemination of new knowledge. Creators enjoy the right to control, and to be remunerated for, subsequent dissemination. Without these incentives some authors might not be motivated to spend their time and effort in creating valuable original expression. However, it should also be noted that a significant number of creators (primarily academics) place a far higher value on dissemination of their creative work rather than direct reimbursement for the use of the work.[3]

In addition, new ideas and knowledge will not readily benefit a society if their transmittal is limited. Only when knowledge is learned, discussed and added to by students, researchers, scientists and the ordinary citizen, is its value truly appreciated.

The means of furthering the public interest are frequently under tension: on the one hand, the rights owner is given control of the dissemination of his or her works; while on the other hand, the rapid and wide-spread dissemination of information contained in these works is also to be encouraged. It is only by consciously and properly balancing these two competing concerns that a copyright regime will maximise both the creation and communication of new knowledge and ideas.

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[1] U.S.Const. Art. I,s.8,cl.8

[2] An Act for the Encouragement of Learning,1709, 8 Ann.,c.21(Eng.),*reprinted in* 9 STATUTES OF THE REALM, at 256 (1993)

[3] It is worth noting that a large proportion of scholarly publishing is based on content for which academics assign copyright for no payment. Furthermore, the quality of the content is assured by a refereeing process, which is also, normally, provided gratis. Yet it is this very content which is "purchased back" by higher education systems at persistently inflating costs, costs which have been the subject of great international concern by librarians and universities for well over a decade. It is for this reason that recent efforts to develop alternative publication models are attracting increasing attention within research groups, academic disciplines, and higher education institutions.

This need for balance can be seen in the Universal Declaration of Human Rights, which recognises both sides of the equation as vital to humanity. The protection of the labour of authors is guaranteed by Article 27(2): '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.' While the right of all to share in the cultural and scientific output of humanity is similarly guaranteed by Article 27(1): '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.'[4]

IFLA strongly endorses the notion that copyright must be balanced. The 'IFLA Position on Copyright in the Digital Environment' states:

> "Librarians and information professionals recognise, and are committed to support the needs of their patrons to gain access to copyright works and the information and ideas they contain. They also respect the needs of authors and copyright owners to obtain a fair economic return on their intellectual property. Effective access is essential in achieving copyright's objectives. IFLA supports balanced copyright law that promotes the advancement of society as a whole by giving strong and effective protection for the interests of rightsholders as well as reasonable access in order to encourage creativity, innovation, research, education and learning."[5]

The importance of copyright balance and the role of the library

There are many supporters of strong intellectual property rights today. Media companies and their trade associations view ever increased rights for copyright owners as the best way to maximize their potential revenue. It is somewhat harder, however, to find equally prominent defenders of the other half of the copyright balance, namely the needs of the public to have reasonable legitimate access to copyright material. This can be attributed to some degree to the fact that many advocates of stronger rights for copyright owners have a financial interest in such an outcome. The wider public interest in being able to access this material is more diffuse and usually has no direct economic motive and so is less likely to attract professional advocates. The library sector, however, is proud to view itself as a custodian of the public interest in this regard.

Libraries are major purchasers of copyright protected works, both analogue and digital, and make such works available for patrons to browse, read and use. Librarians and information professionals do, where possible and to the best of their ability, protect against copyright abuse of library material in collections.

Access to knowledge is vital for a number of reasons:

- A full and comprehensive exchange of information is necessary for the functioning of a healthy democracy. A society which is unable to access the knowledge required for a proper discussion of political, social, environmental or economic issues will not be able to achieve the kind of broad consensus upon which a healthy society is based;

- A rich public domain and fair access to copyright protected material enhances creativity and the production of new works. It is often assumed that economic growth benefits from ever-stronger intellectual property rights while some concession must be made to copyright exceptions for purely social reasons. In fact this is a false dichotomy.

[4] Universal Declaration of Human Rights, G.A.Res.217A,(III), U.N.Doc.A/810 at 71 (1948)
[5] http://www.ifla.org/111/clm/pl/pos-dig.htm

Many industries require access to copyright material for the purposes of research and development, education, software or hardware interoperability. A lack of reasonable access can actually hurt economic growth.

- Fair access to material in copyright can help to mitigate the digital divide. If access to knowledge is dependent upon an individual's capacity to pay, then the less privileged will be placed at a significant disadvantage. In particular, this can play a part in perpetuating poverty and the lack of educational opportunities.

The limits of copyright

A balance between the interests of copyright owners in receiving fair reward for their efforts and the interests of copyright users in receiving reasonable access to copyright materials has been traditionally maintained in a number of ways. One of the most important of these is the implementation of a series of limitations and exceptions to the exclusive rights of copyright owners, which is the subject of this submission. However, there are other important limits, besides exceptions, on the control over knowledge that copyright imposes, some of which are being weakened in the digital environment.
These limits are:

- Duration of copyright
- Limited suite of rights
- Subject matter

Duration of copyright
Copyright has a limited duration, after which copyright material enters the public domain and may be freely used by anyone for any purpose. This is a very important aspect to copyright as it guarantees an enormous treasure trove of resource material that is permanently available to education, research and the development of new creative works.

However, the entry of copyright works into the public domain has been restrained by successive increases in the duration of copyright. The maximum duration of copyright, when the very first Copyright Act was passed in England following the passage of the Statute of Anne, was 28 years. Since then the duration of copyright has increased in many jurisdictions to the life of the author plus 70 years, which is far beyond any reasonable window of commercial exploitation. In the United States, Lawrence Lessig argues that copyright duration has been extended no fewer than 11 times in the last 40 years.[6] Professor Peter Jaszi refers to this as 'perpetual copyright on the instalment plan'.[7]

While the duration of copyright provides the author with a definite period of protection, extending the term progressively is unfairly prejudicing users of information. The reasoning given for an extended term of protection is that life expectancy is increasing and hence the period of protection should be extended accordingly. This argument fails however, because the copyright term is now well beyond one's lifetime. Moreover, extended terms of protection are even more prejudicial to some developing countries where adult life expectancy is low. Essentially, what the extension of the term does is benefit rights owners and their future generations in developed nations, at the expense of users of information and potential new creators in both developed and developing nations. This result distorts the balance and prevents the use of older works in new ways.

[6] NY Times 30 April 2001
[7] Statement of Professor Peter Jaszi, The Copyright Term Extension Act of 1995: Hearings on S.483 before the Senate Judiciary Committee, 104th Congress (1995). WL 1052-4355 9.

IFLA also believes that it is ironic that the extension of the copyright term is occurring at the same time that many governments are promoting increased access to local content through digitization. Much of this content is perceived by copyright owners to have no economic value. Nevertheless, it will continue to remain broadly inaccessible, as it will not enter the public domain until the expiry of its allotted span - well beyond the lifetime of the author. Following the passage of the Copyright Term Extension Act[8] in the United States, for example, almost no additional works will come into the public domain until 2023. With copyright enjoying such a long duration, the operation of exceptions becomes more important than ever.

Limited suite of rights

A copyright owner's capacity to control the use of his or her work is limited to the suite of rights, which is specifically granted by the copyright regime. These rights typically include the right to reproduce, the right to communicate to the public, the right to publish etc. Uses that fall outside these rights are not subject to the copyright owner's control. For example, copyright permission is required to print copies of a book; however, once a legitimately-printed copy has been sold, the copyright owner may not control what is done with that copy (with the exceptions of importation in some jurisdictions and rental and lending rights in Europe). The purchaser is free to read the book multiple times, lend, borrow, sell or destroy it. (This was enshrined in U.S. law as the 'Doctrine of First Sale.'[9])

Again, the digital environment has very much weakened the value of this limit; most uses of a digital work will constitute either a reproduction or a communication or both. Access to copyright works in the digital environment requires a reproduction even of a temporary nature, e.g. a cache copy. If the right to control reproduction is not limited, a rights owner has the right to total control of every access.[10]

Subject-matter

Copyright historically applied only to books. It has been expanded ever since to include an ever-widening set of creative and non-creative material. For example, some compilations of purely factual data (e.g., directories) may be protected by copyright, if they fulfil the originality test, as well as by a unique database protection in many jurisdictions,[11] although notably, not in the U.S. In those jurisdictions where such data is protected, the traditional distinction between an idea and its expression in copyright is broken down and means that users are constrained from extracting factual data contained in a database (such as a residential address) as well as more creative material.

Due to the reduced impact of these limitations on the scope of copyright in the digital environment, other exceptions and limitations have become more important than ever. It should not be forgotten that copyright is a monopoly right. Without exceptions, copyright owners would have a complete monopoly over learning, and thus control access to knowledge in the digital age.

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[8] Sonny Bono Copyright Term Extension Act of 1998, Pub.L.No.105-298,112 Stat.2827 (codified as amended in scattered sections of 17 U.S.C.)

[9] 17 U.S.C. s.109

[10] Randall Davis *Communications of the ACM,* Vol. 44, No. 2 (February 2001), Pages 77-83. Paper given at the WIPO E-Commerce conference, September 2001.

[11] Mainly in the European Union. Also this gives weight to the argument over the duration of terms of protection: the sui generis right in the EU Directive on the Legal Protection of Databases gives potentially perpetual protection for data, as the 15 year term could, in practice, be extended indefinitely.

The role and operation of exceptions to the rights of copyright owners

Exceptions to the rights of copyright owners have been around almost as long as the rights themselves. The English Statute of Anne (1710) contained no exceptions but did require that deposit copies be lodged with seven important libraries as a condition of protection – the first codification of a balancing principle, that is, in return for copyright protection, copies of the work must be made available to the public.

Article 9(2) of the Berne Convention (Paris Act 1971)[12] permits member countries to make exceptions with respect to the right of reproduction of copyright owners provided that such exceptions:

- Are a 'special case';
- Do 'not conflict with a normal exploitation of the work'; and
- Do 'not unreasonably prejudice the legitimate interests of the author.'

The Berne Convention also contains Article 10 (which permits free uses for the purposes of 'Quotations' and 'Illustrations for teaching') and Article 10*bis* (which permits further possible free uses for the purpose of reporting current events). Compulsory licences are also permitted in certain other circumstances by Article 11*bis* and Article 13.

Similar provisions exist in the World Trade Organisation agreement on Trade-Related Aspects of Intellectual Property (TRIPS)[13] (specifically Article 9(2) of Berne is repeated in Article 13 of TRIPS, with respect to all rights, not simply the right of reproduction.).

Exceptions form an important part of many national copyright regimes. Probably the best known copyright exception is the U.S. 'Fair Use' Doctrine. This provision was enacted as section 107 in the 1976 enactment of Title 17, the U.S. Copyright Act[14] but it has its origins in over a century of case law. It provides that a 'fair use' is not an infringement of copyright. 'Fairness' is determined with reference to the following four principles:

- the purpose and character of the use, including whether such use is of a commercial nature or is for non-profit educational purposes;
- the nature of the copyrighted work;
- the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
- the effect of the use upon the potential market for or value of the copyrighted work.

Purposes such as 'criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research' are suggested as possible 'fair uses' but these are not exclusive; other purposes also fit within the fair use criteria. As such this allows for a potentially very wide (and ever expanding) set of free uses covered by these exceptions.

Other jurisdictions such as the United Kingdom, Canada, South Africa, Australia and New Zealand and some other Commonwealth countries have similar provisions, which are tied to specific purposes (such as 'fair dealing for research or private study'). These countries

[12] Berne Convention for the Protection of Literary and Artistic Works, Sept.9, 1886, 828 U.N.T.S.221, *revised at* Paris, July 24,1971, 1161 U.N.T.S. 31.
[13] Agreement on Trade-Related Aspects of Intellectual Property Rights. Apr.15, 1994, Marrakesh Agreement Establishing the World Trade Organization [hereinafter WTO Agreement, Annex 1c, 1869 U.N.T.S.299(1995) [hereinafter TRIPS Agreement].
[14] 17 U.S.C. s.107 (1976).

typically have a wide set of relatively narrow exceptions for the benefit of individuals, educational institutions, libraries or other cultural institutions and Governments. (The United States also has another provision, section 108, for the benefit of libraries and archives.) Such exceptions have been recognised as being acceptable.

> "The fair dealing exception to infringement to copyright is, and always has been, squarely based on recognition of the paramount public interest in the copying or reproduction of copyright material for certain purposes such as research and study, criticism or review, news reporting, court proceedings and the provision of legal advice." [15]

Countries outside the Common Law tradition tend not to have as broad a range of exceptions as those within. Nevertheless, many allow an important number of free uses.

According to Goldstein:

> "There is no specific provision for fair dealing in civil law practice, but copyright legislation in most civil law countries contains exemptions comparable to those provided under the fair dealing defense. The French legislation, for example, provides narrow exceptions in the case of published works for private copies and, so long as the source and author's name are clearly stated, for press reviews and analyses as well as short quotations for critical, educational, polemic, or scientific purposes. The German Copyright Act provides a long list of limited exceptions in addition to those for quotation and private use." [16]

Copyright exceptions in the digital environment

The World Intellectual Property Organisation treaties, finalised in Geneva in December 1996, set the framework for world digital copyright regimes. The WIPO Copyright Treaty (WCT)[17] and the WIPO Performances and Phonograms Treaty (WPPT)[18], both of which recently came into force following the 30th ratification of each treaty, provide for a Berne-consistent update of the international copyright regime.

The WCT specifically provides for member countries to enact exceptions within the confines of the three-step test:

> **"Article 10**
> **Limitations and Exceptions**
>
> (1) Contracting Parties may, in their national legislation, provide for limitations of or exceptions to the rights granted to authors of literary and artistic works under this Treaty in certain special cases that do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the author.
>
> (2) Contracting Parties shall, when applying the Berne Convention, confine any limitations of or exceptions to rights provided for therein to certain special cases that

[15] Sir Anthony Mason, former Chief Justice of Australia. The Australian Library and Information Association Library Week Oration, State Library of NSW, (1996) *The Australian Library Journal* pp.8-91.
[16] Paul Goldstein. *International Copyright. Oxford Univ. Press,* pp293-4
[17] World Intellectual Property Organization Copyright Treaty, Dec.20,1996, 36 I.L.M.65 (1997)
[18] World Intellectual Property Organization Performances and Phonograms Treaty, Dec.20, 1996, 36 I.L.M.76 (1997).

> do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the author."

Furthermore, the Agreed Statement to Article 10 clarifies this and allows scope for signatory nations to extend exceptions in the digital environment:

> **"Concerning Article 10**
>
> It is understood that the provisions of Article 10 permit Contracting Parties to carry forward and appropriately extend into the digital environment limitations and exceptions in their national laws, which have been considered acceptable under the Berne Convention. Similarly, these provisions should be understood to permit Contracting Parties to devise new exceptions and limitations that are appropriate in the digital network environment.
>
> It is also understood that Article 10(2) neither reduces nor extends the scope of applicability of the limitations and exceptions permitted by the Berne Convention."

Implementation of the WIPO treaties

A number of developed nations have updated or begun updating their copyright laws in accordance with the WIPO treaties. The U.S., Australia and the European Union have enacted WCT-consistent legislation. By early 2003 all EU member states should have implemented the new copyright directive. Other nations such as Canada, New Zealand and South Africa are in the process of updating their copyright legislation. The way in which these treaties are implemented will, in large measure, determine the future of the balance that has been so important to the copyright system and to information users in the past.

The most well known and controversial implementation of the WIPO Treaties is the U.S. Digital Millennium Copyright Act[19]. As well as updating the U.S. Copyright Act to add legal protection for technological copyright protection measures (which will be discussed below) the DMCA updates copyright exceptions for the digital environment.

Section 1201 of the DMCA contains a 'savings' clause, which states that no new protection for copyright holders (such as the protection for technological copyright protection measures) affects any existing exceptions or limitations, including Fair Use. Section 404 of the DMCA also amends the existing exemption for non-profit libraries and archives in section 108 of the Copyright Act to accommodate digital technologies and evolving preservation practices.

There are also several specific exceptions to the protections for technological protection measures including:

- An ongoing administrative rule-making proceeding (administered by the Librarian of Congress) to evaluate the impact of the new prohibition against the act of circumventing access-control measures; and
- Six specific exceptions for the purposes of: 'evaluation of material for acquisition by a nonprofit library, archive and educational institutions', 'reverse engineering', 'encryption research', 'protection of minors', 'personal privacy', and 'security testing'.

[19]Digital Millenium Copyright Act, Pub.L.No.105-304, 112 Stat. 2860(1998) (codified in scattered sections of 17 U.S.C.).

However, not all academics and educational institutions are satisfied with all the clauses of the DMCA and debate continues on a number of issues.

The passage of the European Union Copyright Directive (the *Directive on the harmonisation of certain aspects of copyright and related rights in the information society*[20]) has also been extremely controversial. The Directive contains a number of prescriptive non-mandatory exceptions which national governments may include in their EUCD implementation legislation if they so wish. These include (free or paid for) exceptions relating to: temporary reproductions, the photographic reproduction of copyright material, private use, cultural/educational institution copying, ephemeral recordings for broadcasting purposes, reproductions of broadcasts for 'social institutions', illustration for teaching or scientific research, for the benefit of people with a disability, for reporting the news or current affairs, criticism or review, public security, use of political speeches, use during religious celebrations, for public art or architecture, for the incidental inclusion of a work in other material and for several other, essentially minor, purposes.

The EU copyright directive is an example of the growing trend by certain rights owners to try to erode traditionally recognized exceptions. Librarians had to lobby hard to prevent the narrowing of fair practices, especially library copying. To compensate for the potential loss to rights owners from certain exceptions, Member States are permitted to levy a payment, despite the fact that all the optional exceptions are subject explicitly to the Berne three step test. Librarians say that if an exception is allowed, a decision has been made that there is no harm to rights owners, in which case there is no need to compensate for loss.

Other countries such as Australia have also updated their copyright regimes to accommodate new digital technologies and included numerous extensions of exceptions to the digital environment. The Australian *Copyright Amendment (Digital Agenda) Act 2000*[21] provides for a broad range of digital copyright exceptions including for the purposes of research and study, criticism and review, reporting the news, library and archive communication of materials in their collection, library and archive preservation of material in their collection, temporary reproductions and educational copying among others. This Act also includes permitted purposes in support of which a 'qualified person' may lawfully manufacture, import or supply circumvention devices. These permitted purposes are: library/archive reproduction and communication, reverse engineering of computer programs, educational copying, Parliamentary copying and Government copying.

Using copyright legislation to restrict usage has serious implications for education, especially in developing countries, where often photocopies or digital copies are the only source of information available. To give an example, in recent years the South African Government published proposed amendments to the Copyright Act and its Regulations which would have eroded fair use and virtually removed all exceptions for educational purposes from the current legislation. The South African Government also failed to address the needs of the disabled, the distance learner and the illiterate as well as the issue of digital technology. The educational sector objected strongly and succeeded in having the proposed amendments withdrawn.

Balance Achieved?

[20] Directive 2001/29/EC of the European Parliament and of the Council on the Harmonization...,2001 O.J (L.167) 10.
[21] Copyright Amendment (Digital Agenda) Act, 2000, no.110 (Austrl.).

Despite the attempts in a few jurisdictions to maintain the balance, it is increasingly apparent to IFLA that the traditional copyright balance is under serious threat in the digital environment from a variety of sources. Recent expanded use of technological protection measures (and the laws that protect them) and the emerging licensing environment are converging to shift the use of copyright materials to a pay per view environment, which limits access to those who can pay.

Use of Technological Copyright Protection Measures

The U.S. DMCA was the world's first effort to implement the WIPO Treaties when it was enacted in 1998. Because of this, and because of the size and technological advancement of the U.S., it is an excellent barometer of trends with respect to digital copyright. Technological copyright protection measures are a significant issue for the world's library and education communities, because they can override and effectively eliminate any copyright exceptions. This is because such technological measures do not distinguish between uses which are not authorised by the copyright owner but are permitted by law, on the one hand, and those uses which are not authorised by the owner and also infringing. For example, the same copy-control mechanism, which prevents a person from making infringing copies of a copyright work, may also prevent a student or a visually impaired person from making legitimate fair use/fair dealing copies.

Several recent U.S cases have tested the new approach as follows:

- *Universal v. Reimerdes*:[22] in this case, a software device, DeCSS, enabled DVDs to be decrypted so that they (i) could be played on non-Windows PCs and (ii) copied. The Court banned even linking to this software application on the grounds that such a device would lead to piracy (even though no evidence was tendered of actual use of DeCSS in the service of DVD piracy). The Court dismissed the fact that there might be legitimate fair use reasons for copying all or part of a DVD film. The Court took this position even though an earlier Supreme Court decision, before the DMCA, – *Sony* v. *Universal Studios,* had held that a device could not be found in violation of the Copyright Act if it had substantial other non-infringing uses. Thus, simply because VCRs, CD-Burners and photocopiers can be used for infringing purposes does not mean they have been outlawed.

- *Felten v RIAA:*[23] in this case, Professor Edward Felten of Princeton University, was threatened with a lawsuit by the Recording Industry under the DMCA if he revealed his findings of security flaws within the Secure Digital Music Initiative (SDMI) at an IT security conference. He later sued the RIAA for a declaratory judgement to clarify his rights to freedom of expression. The RIAA retracted its specific legal threat so Felton's case became moot, but the shadow hanging over freedom of scientific expression remained.

- In *U.S. v. Sklyarov*[24], Dmitri Sklyarov, a Russian computer programmer was arrested and threatened with criminal prosecution for making the 'Advanced e-book Processor' (AEBP). (He was later released but the company he works for is still facing charges.) The AEBP is a tool, which translates e-books from Adobe's e-Book format to Adobe's Portable Document Format (PDF). This translation process removes the various restrictions (against copying, printing, text-to-speech processing, etc.) that publishers can

[22] *Universal City Studios, Inc. v. Reimerdes,* 111 F.Supp.2d 294 (S.D.N.Y.2000).
[23] Professor Felten's complaint was dismissed, but the website of the Electronic Frontier Foundation displays the complaint and other relevant information. *See* http://www.eff.org/Legal/Cases/Felten v RIAA/.
[24] See *U.S. v. Elcom,*Ltd.,203 F.Supp.2d 1111 (N.D.Cal.2002).

> impose on e-Books. The program is designed to work only with e-Books that have been lawfully purchased from sales outlets. The Advanced e-Book Processor allows those who have legitimately purchased e-Books to make fair uses of their e-Books, which would otherwise not be possible with the current Adobe e-Book format, such as printing an e-Book on paper or having a computer read an e-Book out loud using text-to-speech software. The latter is particularly important for visually impaired individuals.

These judicial interpretations of the DMCA indicate that in a conflict between new technological protection measures for copyright material and new uses enabled by new technology, it is the new uses which will lose out, even to the point that those who create devices with dual-uses (both 'fair' and infringing) may find themselves the subject of a criminal prosecution.

Another example of the disadvantages, or even dangers, of technological protection measures overriding exceptions appears in the EU Copyright Directive, Article 6.4. This allows the governments of EU Member States to intervene, in the absence of voluntary agreements between users and rights owners, to enable a beneficiary of an exception to benefit, but it is effectively negated, as the Directive does not allow intervention if a contract exists. As there is likely to be massive online contracting on the Internet with most terms and conditions being imposed and not negotiated, the value of governments intervening to enable exceptions has the practical effect of being limited to the offline environment. In any case, such intervention takes up valuable time and effort and so is likely to be little used by consumers.

The emerging licensing environment

In addition to intellectual property laws and the increasing use of digital rights management technology, contractual licensing also shapes the digital environment and is being used to limit user rights. 'Unlike paper materials, digital information generally is not purchased by consumers or the library; rather it is *licensed* by the library from information providers. A license usually takes the form of a written contract or agreement between the library and the owner of the rights to distribute digital information.' [25]

Licenses for libraries frequently take one of three forms: 'standard-form' paper licenses,'shrink-wrap or 'click-through' licenses. In most cases there is no opportunity to actually negotiate the terms of these licenses, and even if there were, the relative bargaining power between the purchaser and the manufacturer is grossly uneven. Shrink-wrap licenses are so-called because they are contained inside shrink-wrapped plastic around a physical article embodying intellectual property (such as a CD-ROM). 'Click-though' licenses are typically used with respect to copyright material that is acquired online; before the user can access any part of the copyright material, they must first signal their agreement with a licence agreement (usually by clicking the 'I agree' button). Standard-form agreements may or may not be negotiable, however, shrink-wrap or click-through licenses never are.

There are many reasons why a vendor may wish to use such a license agreement and IFLA is not opposed to the use of such agreements provided both parties to the agreement are equal, i.e., one party has something to sell, the other has the purchasing power to buy, and both parties negotiate terms and conditions. However, there is a growing problem that such agreements are being used as 'unilateral legislation'; that is, license agreements frequently override copyright exceptions and set a level of usage that is more restrictive than the law allows. Licenses can involve a wide range of terms and conditions, but, unlike copyright law,

[25] http://www.library.yale.edu/~llicense/intro.shtml

licensors are not statutorily obliged to consider the public interest in accessing information when setting such terms and conditions. As most digital information is distributed by license, public policy considerations such as fair use, fair dealing or exceptions to the author's rights are likely to become null and void. It is therefore essential that limitations and exceptions are carefully considered in the digital realm to protect access to information..

Some examples of the types of restrictions that license agreements often impose include:

- restrictions on users printing or downloading or emailing copies of (parts of) the material;
- restrictions on the number, location, and organizational affiliation of users;
- restrictions on libraries performing inter-library loan/document supply;
- restrictions on libraries copying the work for preservation purposes;
- restrictions on the use of a work beyond a certain date;
- restrictions on libraries networking the work across the premises of the library;
- restrictions on lending or otherwise disposing of a digital work.
- restrictions on the right to quote, analyze and even to index a work

The combination of protected technological measures and licenses can lead to an absolutely unlimited protection of the interests of the rights owners, who benefit from several cumulative layers of protection: copyright protection, technological protection, legal protection of the technological measures, and contract law.

The IFLA Position

> "Digital technology enables [publishers] to track and charge for every instance of electronic access, even for browsing…. The resulting market power then allows the publisher to impose monopoly prices and potentially oppressive terms on users, including libraries, academies, institutes and research centers, and to ignore the social consequences that ensue from the inability of research organizations to pay for such access."[26]

Most copying of print-based material in libraries is for educational, research or private study purposes or for preservation. The reasons usually given for copying are because users are unable to read the material in the library (material is in demand or reference only) or because the user wishes to read it at a more convenient time (time shifting). Despite rights owner concerns about loss of sales there is no evidence that copying ***reasonable amounts*** from copyright protected works displaces sales. Those who copy would not necessarily buy a work if prevented from copying it. There is no reason to believe that this pattern will not also be true of copying from digital works.

IFLA believes, therefore, that not only must traditional copyright exceptions be preserved both in the print (analogue) environment but also in the digital environment, and that this must be addressed at the same time as the issues of the increasing use of copyright protection technologies and contractual license agreements. It is of little use for national legislatures to

[26]Pamela Samuelson and J.R. Reichman, *Vanderbilt Law Review* 50(1) January 1997 p71.

guarantee fair use rights if these rights are promptly overridden by non-negotiated click-through licence agreements or technological protection systems in almost every case.

IFLA also believes that if exceptions allowed in national legislations conform to the Berne Convention three-step test, the interests of rights owners will not be harmed and, therefore, no further permission or compensation payment for uses should be required.

However, it should be borne in mind that the needs of the users in developing countries are greater than those in developed countries. More exceptions are necessary, particularly in the transformation from illiteracy to literacy, e.g. in literacy programmes, basic adult education training, etc.

IFLA's position on copyright on these issues is as follows:
On copyright exceptions
IFLA maintains that unless libraries and citizens are granted exceptions which allow reasonable access and fair use for purposes which do not harm the interests of rights owners, and which are in the public interest and in line with fair practice such as education and research, there is a danger that only those who can afford information will be able to take advantage of the benefits of the Information Society. If there were no effective public interest exceptions, especially in the digital environment, this would lead to an even greater divide than already exists between the information rich and the information poor in both the developed and developing nations. This is not to say that rights owners should be persuaded to give their works away freely. Once a work has been legitimately obtained, e.g., purchased by a library or an individual, there should be some exceptions allowed under national laws, which are in line with the Berne three-step test. Further, there should be no discrimination in copyright laws against visually, aurally or learning disabled persons. Reformatting of material to make it accessible should not be considered an infringement of copyright and should be considered as reasonable access. In countries with many languages and dialects, there is a greater need for exceptions to allow translation and reproduction of materials for literacy and learning purposes.

In national copyright legislation, exceptions to copyright and related rights, allowed in the Berne Convention and endorsed by the WIPO treaties, should be revised if necessary to ensure that permitted uses apply equally to information in electronic form and to information in print, and for copying over and above these provisions there should be administratively simple payment or licensing schemes.

IFLA supports moves for differential and cheaper licensing tariffs for disadvantaged communities. For example, developing countries do not always have the resources to pay high copyright fees, particularly in foreign currencies. If they cannot afford the licensing fees, they are denied access to the material and its benefit for their communities. Less relevant or non-current material then has to be substituted which can have serious implications, particularly where up-to-date information is essential, e.g., information on healthcare, HIV/AIDS, etc.

Temporary or technical copies which are incidental to the use of copyright material and which have no economic value should be excluded from the scope of the reproduction right

For works in digital format, without incurring a further payment or seeking permission, all legitimate users of a library should be able to:

- browse publicly available copyright material;

- read, listen to, or view lawfully acquired publicly marketed copyright material privately, on site or remotely; (including material which has to be adapted for those with a learning disability or translated into a different language)

- copy, or have copied for them by library and information staff a reasonable proportion of a digital work in copyright for personal, educational or research use.

On Information Resource Sharing
IFLA believes that resource sharing plays a vital role in education, democracy, economic growth, health and welfare and personal development. It facilitates access to a wider range of information, which would not otherwise be available to the user, library or country requesting it. Resource sharing is not a mechanism to reduce costs but to expand availability to those who, for economic, technical or social reasons are unable to have access to the information directly. If a library has lawful access to a digital work, then providing access for any legitimate purpose such as research or study should be permitted under copyright law.

On Lending
Non-commercial public lending is not an activity that has traditionally been controlled by copyright law but in some countries it has become a restricted act. Public lending is essential to culture and education. It should be available to all. Information packaged in all formats has and will become part of the lending stock. Lending in turn assists in the marketing of commercially packaged information and encourages sales. Libraries are, in effect, catalysts for the sale of information in all of its formats. Therefore, any legal or contractual restraints put on lending would be to the disadvantage of rights holders as well as to the libraries themselves. Unfortunately a precedent has been set with the European Union when lending was made a restricted act under copyright even though it is not an international requirement.[27]

IFLA believes that the lending of published materials by libraries should not be restricted by legislation and that contractual provisions, for example within licensing agreements, should not override reasonable lending of electronic resources by library and information staff.

On preservation and conservation
Libraries collect and preserve information. In fact, the responsibility for preserving information and culture falls largely to the library and information profession.

Copyright law should allow libraries to copy protected material in order to preserve it and legislation should not prevent libraries from relying on new technology to improve preservation techniques and to make digitally preserved materials available to library users.

Legislation should give libraries and archives permission, where necessary, to convert copyright protected materials into digital format for preservation and conservation related purposes and libraries should be allowed to provide access to such materials as they would a book, including access both onsite and off-site.

On liability for copyright infringement
Although libraries as intermediaries have an important role to play in ensuring training and compliance with copyright law, liability should ultimately rest with the infringer. Copyright law should enunciate clear limitations on liability of third parties in circumstances where compliance cannot practically or reasonably be enforced.

[27] http://www.library.yale.edu/~llicense/intro.shtml

On the licensing environment[28]
The terms of contractual license agreements for copyright material should support public policies in such areas as copyright, privacy, intellectual freedom, and consumer rights. License agreements for information should not exclude or negatively impact users of the information by removing any statutory rights that may be granted by applicable copyright law. IFLA believes that licensing agreements should complement copyright legislation, not replace it.

National copyright legislation should render invalid any terms of a license that restrict or override exceptions or limitations embodied in copyright law where the license is established unilaterally by the rights owners without the opportunity for negotiation of the terms of the license by the user. At a minimum the license should permit users to read, download, and print materials for their own personal purposes, without restrictions.

On technological copyright protection measures
Copyright protection should encourage and not inhibit, use and creativity. Copyright law should not give rights holders the additional power to use technological measures to override the exceptions and limitations to copyright and distort the balance set in international and domestic copyright legislation. Access to information, rather than control of information, increases use. Indeed studies have shown that too much control, in the form of technical protection, is counterproductive[29]. Circumvention of technological measures for non-infringing activities should be enabled.

National copyright laws should ultimately aim for a balance between the rights of copyright owners to protect their interests through technical means and the rights of users to circumvent such measures for legitimate, non-infringing purposes.

Conclusion

IFLA welcomes the opportunity to make these comments on the need for adequate exceptions to support UNESCO aims on education, literacy and social justice and encourages UNESCO to consult as widely as possible on this very important issue. IFLA sincerely believes that lobbying by some rights owners against national copyright exceptions, plus the increasing use of technological copyright protection measures and restrictive licensing conditions, is leading to a situation where the dissemination of culture and knowledge is threatened and the level of dissemination is no longer in accordance with wider public policy goals. IFLA does not believe that the best solution for facing the problems of copyright in the digital environment is to replace the regulatory regime of copyright law with the conditions of access established unilaterally by information suppliers.

The original purpose of copyright was to protect the author or creator in the wider public interest. We now live in a digital age and there is a danger of copyright becoming a legal protection mechanism for commercial conglomerates. There is a growing threat to the public interest aspect of copyright, with certain copyright owners wielding an enormous power to set their own rules and build a "private legislation" that does not necessarily take into account the balance created in copyright laws.

IFLA does not want to see an environment where total control over access to information is in the hands of a small number of large transnational companies. If all uses of information are

[28] See IFLA Licensing Principles http://www.ifla.org/V/ebpb/copy.htm
[29] Randall Davis. Op.cit.

controlled, only the affluent will be able to receive the benefit of access to the world's creative output. IFLA is concerned that, unless this control is limited, it will interfere with the greater good of society. One cannot rely on rights owners to put the interests of society first. That is the role of governments. Although no one denies rights owners the right to obtain a return on their investment, limitations in the form of exceptions must be part of the equation to ensure that society may also obtain a similar return on its investment in education and research. Only in this way will a balance be achieved.

Appendix 1 The IFLA Position on Copyright in the Digital Environment
Appendix 2 The IFLA Licensing Principles

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Appendix 1

The IFLA Position on Copyright in the Digital Environment (2000)

Committee on Copyright and Other Legal Matters (CLM)

IFLA is an international non-governmental organisation (NGO) which exists to undertake, support and co-ordinate research and studies, and disseminate information about all aspects of library and information work world wide and to organise meetings and training in this field. In the international copyright debate, IFLA represents the interests of the world's libraries and their users. Copyright law impacts on most of what libraries do. It affects the services that libraries can provide to their users, and the conditions on which they can provide access to copyright materials. It affects the way in which libraries can act as navigational agents and undertake effective archiving and preservation activities. It is for these reasons that IFLA participates in the international copyright debate.

Balanced Copyright is for everybody

Librarians and information professionals recognise, and are committed to support the needs of their patrons to gain access to copyright works and the information and ideas they contain. They also respect the needs of authors and copyright owners to obtain a fair economic return on their intellectual property. Effective access is essential in achieving copyright's objectives. IFLA supports balanced copyright law that promotes the advancement of society as a whole by giving strong and effective protection for the interests of rightsholders as well as reasonable access in order to encourage creativity, innovation, research, education and learning.

IFLA supports the effective enforcement of copyright and recognises that libraries have a crucial role to play in controlling as well as facilitating access to the increasing number of local and remote electronic information resources. Librarians and information professionals promote respect for copyright and actively defend copyright works against piracy, unfair use and unauthorised exploitation, in both the print and the digital environment. Libraries have long acknowledged that they have a role in informing and educating users about the importance of copyright law and in encouraging compliance.

However, IFLA maintains that overprotection of copyright could threaten democratic traditions and impact on social justice principles by unreasonably restricting access to information and knowledge. If copyright protection is too strong, competition and innovation is restricted and creativity is stifled.

In the Digital Environment

Information is increasingly being produced in digital format. New communications technologies bring unprecedented opportunities for improving access to information and technology has the potential to improve communication and access for those disadvantaged by distance or economic circumstances. However, we now know that technology also has the potential to further stratify society into the information-haves and the information-have-nots. If reasonable access to copyright works is not maintained in the digital environment, a further barrier will be erected which will deny access to those who cannot afford to pay.
Libraries will continue to play a critical role in ensuring access for all in the information society. Properly functioning national and international networks of library and information services are critical to the provision of access to information. Traditionally, libraries have

been able to provide reasonable access to the purchased copies of copyright works held in their collections. However, if in future all access and use of information in digital format becomes subject to payment, a library's ability to provide access to its users will be severely restricted In order to maintain a balance between the interests of rights holders and users, IFLA has developed the following statement of principles.

Digital is not Different

The Berne Convention permits members of the Berne Union to grant exceptions in certain special cases which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the author.

In 1996, the members of the World Intellectual Property Organisation adopted two treaties to update copyright law for the digital environment. In confirming that existing exceptions and limitations can be carried forward and extended in the digital environment, WIPO countries rejected the claim that "digital is different". Contracting parties are allowed to carry forward and extend such limitations in the digital environment, and create new exceptions where appropriate.

IFLA maintains that unless libraries and citizens are granted exceptions which allow access and use without payment for purposes which are in the public interest and in line with fair practice such as education and research, there is a danger that only those who can afford to pay will be able to take advantage of the benefits of the Information Society. This will lead to an even greater divide between the information rich and the information poor. Further, there should be no discrimination in copyright laws against visually, aurally or learning disabled persons. Reformatting of material to make it accessible should not be considered an infringement of copyright and should be considered as reasonable access.

1. In national copyright legislation, exceptions to copyright and related rights, allowed in the Berne Convention and endorsed by the WIPO treaties should be revised if necessary to ensure that permitted uses apply equally to information in electronic form and to information in print.
2. For copying over and above these provisions there should be administratively simple payment schemes.
3. Temporary or technical copies which are incidental to the use of copyright material should be excluded from the scope of the reproduction right.
4. For works in digital format, without incurring a charge or seeking permission all users of a library should be able to:
    - browse publicly available copyright material;
    - read, listen to, or view publicly marketed copyright material privately, on site or remotely;
    - copy, or have copied for them by library and information staff a reasonable proportion of a digital work in copyright for personal, educational or research use.

Information resource sharing

Resource sharing plays a crucial role in education, democracy, economic growth, health and welfare and personal development. It facilitates access to a wide range of information, which would not otherwise be available to the user, library or country requesting it. Resource sharing is not a mechanism to reduce costs but to expand availability to those who, for economic, technical or social reasons cannot have access to the information directly.

- Providing access to a digital format of a protected work to a user for a legitimate purpose such as research or study should be a permitted act under copyright law.

Lending

Non-commercial public lending is not an activity that has traditionally been controlled by copyright law. Public lending is essential to culture and education. It should be available to all. Information packaged in all formats has and will become part of the lending stock. Lending in turn assists in the marketing of commercially packaged information and encourages sales. Libraries are, in effect, catalysts for the sale of information in all of its formats. Therefore, any legal or contractual restraints put on lending would be to the disadvantage of rights holders as well as to the libraries themselves.

- The lending of published physical format digital materials (for example CD-ROMs) by libraries should not be restricted by legislation.
- Contractual provisions, for example within licensing agreements, should not override reasonable lending of electronic resources by library and information staff.

Preservation and conservation

Libraries collect and preserve information. In fact, the responsibility for preserving information and culture belongs to the library and information profession. Copyright law should not prevent libraries from relying on new technology to improve preservation techniques.

- Legislation should give libraries and archives permission to convert copyright protected materials into digital format for preservation and conservation related purposes.
- Legislation should also cover the legal deposit of electronic media.

Contracts and Copy Protection Systems

Copyright protection should encourage not inhibit, use and creativity. Copyright law should not give rightsholders the power to use technological or contractual measures to override the exceptions and limitations to copyright and distort the balance set in international and domestic copyright legislation. Licensing agreements should complement copyright legislation, not replace it. Access to information, rather than control of information, increases use. Indeed studies have shown that too much control, in the form of technical protection, is counterproductive. Circumvention of technological measures for non-infringing activities should be enabled.

- National copyright legislation should render invalid any terms of a licence that restrict or override exceptions or limitations embodied in copyright law where the licence is established unilaterally by the rightsholders without the opportunity for negotiation of the terms of the licence by the user.
- National copyright laws should aim for a balance between the rights of copyright owners to protect their interests through technical means and the rights of users to circumvent such measures for legitimate, noninfringing purposes.

Liability for Copyright Infringement

Although, libraries as intermediaries have an important role to play in ensuring compliance with copyright law, liability should ultimately rest with the infringer.

- Copyright law should enunciate clear limitations on liability of third parties in circumstances where compliance cannot practically or reasonably be enforced.

Approved by the IFLA Executive Board
August 2000

Appendix 2

Licensing Principles (2000)

Prepared by IFLA's Committee on Copyright and other Legal Matters (CLM)

Introduction

1. The worldwide marketplace for all types of electronic information resources is rapidly being developed as publishers and vendors who create electronic information seek to attract libraries of all types (public, academic, special, national) as their customers. Today, libraries around the world continue in their role as mediators between citizens, including those affiliated with specific institutions, and information and cultural expression - roles that persist even more energetically, it appears, for electronic information than for print. And, just as libraries advance the archiving and preservation of traditional media, so they are seeking ways to ensure that electronic resources will be archived and preserved to be accessible over a long period of time. Pricing also remains an issue: libraries continue to express concerns about the fact that a number of electronic resources appear to be priced higher than were their print counterparts.
2. While the library community strongly supports the continuation into the digital environment of exceptions that have been granted under copyright law, there are some areas where different procedures and policies need to be developed to handle electronic publications. Of particular interest to IFLA in the development of licenses is the following:

- 2.1 Use of electronic information everywhere in the world is, at this time, usually defined and described by contractual agreements, otherwise known as licenses. These licenses describe comprehensively the terms of the provider/library relationship. Contracting is a comparatively new (1990s) way of doing business for most parties in the information chain.
- 2.2 Licenses are pure marketplace arrangements in which a willing information provider and a willing purchaser of information access come together to make arrangements, deal by deal, resource by resource.
- 2.3 User rights are defined within the terms and conditions of the licenses. They are not governed by (comparatively well understood) copyright legislation to the same extent as is the use of "fixed" or traditional information formats.
- 2.4 Libraries generally provide patron access to such information via access to remote publisher or vendor sites, rather than library-controlled sites. Yet, the tasks and costs of libraries and information providers with regard to long-term archiving and preservation of electronic resources are disturbingly unclear. While a license cannot resolve this complicated set of electronic archiving issues, it will, generally, recognize them and express a set of commitments or expectations on the part of the contracting parties.

3. IFLA views the licensing arena positively, although key issues remain to be resolved. In particular, licensing is showing itself responsive to the complex business arrangements being entered into between information providers and library consortia of different types and sizes. IFLA encourages and supports the evolution of all types of libraries negotiating as consortia. Nonetheless, even with the current move to licensing as a complementary means of regulating the use of electronic information, libraries and their users need effective, well-balanced national copyright laws that recognize not only the

copyright owners' need for remuneration and recognition, but also the critical purposes of public information, education and research. This balance, struck in carefully crafted copyright legislation, must find expression in all information resource licenses.

IFLA hereby presents a set of basic principles that should prevail in the contractual relationship and written contracts between libraries and information providers

Licenses and the Law

P1. Licenses represent an agreement between the library that seeks to make an electronic resource available for its readers or constituents, and a publisher or vendor who has the rights to such resources and seeks to make them available in the library marketplace. License terms and conditions must be fully available to customers in advance of their contracting for said resources. Every license is subject to discussion of terms and to negotiation between the parties.
P2. In the case of "shrink-wrapped" and "click-through" non-negotiated licenses, the terms should support public policies in such areas as copyright, privacy, intellectual freedom, and consumer rights.
P3. Licenses (contracts) for information should not exclude or negatively impact for users of the information any statutory rights that may be granted by applicable copyright law.
P4. The choice of applicable law should be acceptable for both parties. Preferably it should be the national or state law of the licensee.
P5. Licenses should be negotiated and written in the primary language of the library customer.

Licenses and Values

P6. The license agreement should be clear and comprehensive, recognizing the needs of the concerned parties. In particular, important terms should be defined so as to be clearly understood.
P7. The license should balance the rights and responsibilities of both parties.
P8. The license should provide for remedy periods and other modes of resolution before either cancellation or litigation is contemplated.
P9. The contracting parties should have the right to back out of the arrangement under appropriate and defined circumstances.

Licenses: Access and Use

P10. The license should provide access for all of the users affiliated with a licensee, whether institution or consortium, regardless of whether they are on the licensee's premises or away from them.
P11. The license should provide access to individual, unaffiliated users when on the licensee's premises.
P12. The license should provide access for geographically remote sites if they are part of the licensee's organization.
P13. Remote access should be provided by way of a web-based, user friendly interface.
P14. Data that is downloaded locally should be available in multiple standard formats (e.g. PDF, HTML, and SGML), portable to all major computing platforms and networked environments.
P15. At a minimum the license should permit users to read, download, and print materials for their own personal purposes, without restrictions.
P16. Resources provided via remote access to providers' sites should be available on a 24-hour basis, with appropriate "help" or service support, except for short scheduled downtimes

announced with adequate notice to the customer library(ies). Penalties may accrue if service commitments are not met.
P17. A high degree of content stability, both in single and in aggregated resources, should be guaranteed and the institutional customer should be notified of changes. Penalties may accrue if content commitments are not met.

Licenses and End Users

P18. Libraries should work with users to educate them about proper use of electronic resources and take reasonable measures to prevent unlawful use, as well as with providers to halt infringing activities if such become known. Nonetheless, the library should not incur legal liability for actions of individual users.
P19. It is not appropriate to ask the individual user to agree to a contract, such as a "click" contract, where the institution/library has already made -- or may engage in making -- an agreement on behalf of its patrons.
P20. Users' privacy should be protected and respected in the license and in any intervention made by information providers or intermediaries.
P21. The networked information provider should offer usage (as opposed to user) data so that the library licensee may assess the effectiveness of the use of the resource.

Licenses and Perpetual Access

P22. A license should include provision for affordable, perpetual access to the licensed information by some appropriate and workable means.
P23. A license should address provisions for long-term access and archiving of the electronic information resource(s) under consideration and should identify responsibilities for these.

Licenses And Pricing

P24. Prices should be established so as to encourage use rather than discourage it. For example:

5. Many suppliers price electronic information at lower than the print equivalent (if there is one)
6. Many suppliers now offer incentives, such as consortial pricing, a choice of pricing models, and the like.

P25. Prices should be fully disclosed with no hidden charges.
P26. An unbundled (from print) price should be offered for electronic versions; a bundled price may be offered as well where this offers advantages for the licensee.
P27. There should be no penalty for canceling print in order to take up the electronic version of a resource.
P28. Requirements for non-disclosure of license terms are generally inappropriate.

Interlibrary Loan

P29. Provisions for interlibrary loan or equivalent services should be included.
P30. In general, libraries should be able to deliver reasonable length extracts from licensed information to libraries that have not signed a contract for that information for use by a specific patron.

Teaching and Learning

P31. Licenses should support local teaching and learning efforts, from elementary through university level, by permitting links to, or copies of, specific course-related information to appear in online course-support activities such as electronic reserve.
P32. Distance Independent Learning poses a challenge to providers and libraries. Licensors should recognize the affiliation of users with a given library or institution, regardless of users'

physical location and should permit them routine access to licensed electronic information resources (see also clause 8).

Approved by IFLA's Executive Board, March 2001