

Chapter 7

Copyright and Digital Libraries: Securing Access to Information in the Digital Age¹

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ABSTRACT

Challenged by new technology, copyright is currently in turmoil. Increasingly regarded by the general public as a curb to the universal dissemination of knowledge, it seems to have no alternative but to include access to information in order to meet the challenges posed by the knowledge society.³ It might even be its ability to bring together opposing but complementary views that will guaranty its durability in the future and whether it can adapt to a new economic, technological and social environment. Copyright law has shown a remarkable ability to adapt to new developments in the past and has the necessary tools to ensure that this continues to be the case in the future, although the massive technological changes will probably require rethinking the mechanisms for its implementation. It is, therefore, necessary not to think in terms of opposing rights, but of the complementary nature of copyright and the right of access to information, so as to reconcile the two, which is both necessary and desirable. The issue of how to accommodate those two rights is of course of particular importance for libraries that wish to use the fantastic opportunities of digital technologies to both preserve and make accessible works in a easy and cost effective way to the public. Conceiving an optimal legal framework, allowing digital libraries to expand while at the same time securing a fair return to creators and editors might therefore constitutes one of the main challenges for copyright in the digital age. Accordingly, it will be necessary, first of all, to reiterate a number of basic principles of copyright law and carry out a brief historical survey. A study will then need to be carried out of how the advent of the information society has changed the existing balances. This will be followed by a brief discussion of recent developments in the legal provisions currently in force. This in turn would lead us to consider both the changes necessary to those provisions to ensure better access to information as well as certain initiatives that are either under way or planned, with the aim of striking a balance between the interests involved.

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INTRODUCTION: COPYRIGHT LAW AS THE RESULT OF A RECONCILIATION BETWEEN DIVERGING INTERESTS

First of all, it should be pointed out that copyright law relates not only to the rights of authors, but refers to a much more complex legal situation. Since its inception, copyright law has attempted to reconcile the claims of the various players, who are the author/creator, the public and commercial operators (exploiters such as producers and distributors). It is essential for copyright legislation to balance these different interests⁴. Although it is true that the position of these players may vary according to the national legislation concerned, there can be no doubt about the need to strike a fair balance between the various claims. However, it is not an easy task, especially as the interests of the different players vary considerably and, depending on the situation, may even clash.

For example, authors will have an interest in benefiting from the fruits of their labors by receiving payment for the exploitation of their work. However, at the creative stage they will also have an interest in accessing existing works in order to build on them and use them as inspiration for their own work. This is particularly obvious when the author aims to produce a scientific work, since access to existing works will provide a guarantee of the quality and seriousness of his research. At the same time, exploiters will want to recoup their investment in the production of a work. Nonetheless, when they produce a work that incorporates elements already protected by copyright, it will be in their interest not to be excessively obstructed by existing monopolies. Finally, the public will want to have easy and affordable access to works for information and entertainment purposes. However, it will also be in its interest for payment to be made to creators so that new works continue to be created and produced. These examples illustrate the complexity of the interests involved and the need for a balanced approach that takes

account of needs and requirements with regard to both protection and access.

Initial Convergence between the Rationale and Principles of both Copyright and the Right to Access Information

It is worth reiterating that access to information and copyright initially fully converged regarding both the rationale and the principles involved. Accordingly, there was no incompatibility but, on the contrary, genuine complementarity.

Copyright has its roots in the Enlightenment. The philosophers of the 18th century called for the recognition of an author's intellectual property rights in order to guarantee the fruits of their labor, with the higher aim of ensuring cultural and social development. As society needed to regenerate itself, question its values and to be entertained, creators needed to be guaranteed a free space in which they could create works without having to compromise themselves vis-à-vis the authorities. The idea of giving the authors the right to allow the reproduction and representation of their work against the payment of remuneration was intended to guarantee their financial and intellectual independence. Instead of having to flatter men of power to receive payment, they could "free themselves" from their patrons for the greater benefit of the community, which in this way was enriched by the abundance of independent works created. Far from being a selfish right, copyright was clearly conceived as one imbued with an important social function that was to a large extent its *raison d'être*. Since its inception, therefore, it has maintained close links to freedom of expression and to its corollary the right of access to information. It is even possible to see its aim as, at least partially, guaranteeing that access.⁵

This principle of striking a balance between the different interests involved is reflected in the very essence of copyright. In principle, copyright does not prevent access to information. The exclusive

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