

Chapter 20

Digital Libraries, Copyright Limitations, and Access for Purposes of Subsequent Academic Publishing: Still Standing on the Shoulders of Giants?

Pedro Pina

 <https://orcid.org/0000-0002-9597-3918>

Polytechnic Institute of Coimbra, Portugal

ABSTRACT

The chapter aims to analyse the current European Union legislation on digital copyright from the perspective of the public interest in scientific research, by studying the digital exclusive rights framework granted to creators and to database owners and by contraposing it with the foreseen narrow field of public interest based limitations on exclusive rights. Concepts like digital libraries, fair use and limitations on exclusive rights, tpm and drm, copyleft and free/open source contents is analysed. The chapter concludes by identifying the necessity of a redefinition of a new internal balance of copyright law which can respect authors' and database owners' legitimate economic interests and simultaneously promote the dissemination and the access to works for scientific research and publishing purposes and the renewal of the creative cycle.

INTRODUCTION

In its origins, copyright was perceived as a tool to stimulate the production and the dissemination of creative expression and knowledge. It did so by granting authors the exclusive economic right to explore the usages of its creation, excluding others from using it without proper authorization and, normally, remuneration. However, new creations are always the product of cumulative research or of experiencing

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previous intellectual works, as it is recognized in the famous Isaac Newton's phrase coherently based on a metaphor attributed to Bernard of Chartres (Salisbury, 1955, p. 167), "If I have seen further it is by standing on the shoulders of giants" (Newton, 1676/2008, p. 416).

Especially in the case of academic and scientific works, new authors – and, consequently, the public in general – have a strong interest in accessing previous works on the subject matter for purposes of intertextuality, criticism, solidity and intellectual honesty of the research. A legislative framework that grants authors monopolistic powers on the work would harm new authors interests in detriment of the public interest in new and more works and knowledge. For such reason, despite the fact that, in the pre-digital era, copyright law established *quasi* proprietary rights on protected works, it also internalized creation values through the prediction of a set of limitations on exclusive rights safeguarding users' fundamental individual rights or liberties – such as freedom of expression, the right to make quotations or the right to parody – or the public interest on the production and the dissemination of new creative aesthetic, scientific, or academic works. The provision of limitations on exclusive rights favouring an internal balance between the interests and the rights of creators or other holders, on the one side, and the public interest or other individuals, including eventual future authors, on the other side, illustrates "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" (Geiger, 2011, p. 258).

With the advent of digital technologies, access to knowledge and to culture has become more democratized in the sense that technological developments have made it easier to, regardless of the scale, access to, to reproduce and to disseminate works throughout the cyberworld. The referred context promoted the creation of organized collections of information stored in digital formats and accessible over a network which, in a broad sense, are known as digital libraries. As Synodinou (2011) points out, "it should be avoided to define restrictively digital libraries as the digital supplements or the digital versions of traditional libraries, because then new forms of libraries which have been born by the Internet revolution will be neglected" (p. 233). In fact, projects like Wikipedia, Google Books or Europeana illustrate how digital libraries are realities that may not coincide with previous physical analogue libraries and that provide new forms of gathering content, publishing, and sharing digital copies of works. Digital libraries are, therefore, one of the reasons why the European Parliament invited

the Commission and the Member States to recognize that the Internet is a vast platform for cultural expression, access to knowledge, and democratic participation in European creativity, bringing generations together through the information society [... and] to recognise that, as a result of the Internet, traditional ways of using cultural products and services have completely changed and that it is essential to ensure unimpeded access to online cultural content and to the diversity of cultural expressions, over and above that which is driven by industrial and commercial logic, ensuring moreover, fair remuneration for all categories of right holders (Resolution of 10 April 2008 on cultural industries in Europe (2007/2153(INI)).

The benefits of digitization and of digital dissemination of intellectual are evident and unquestionable. However, specifically on what is related to digital libraries and apart from the case of works that are created on a digital format, the creation of the collection implies, massive operations of digitization, meaning the "conversion of analogue information in any form to digital form with suitable electronic devices (such as a scanner), so that the information can be processed, stored, and transmitted through digital circuits, equipment and networks" (Lucas-Schloetter, 2011, p. 159), operations that may conflict with core powers granted by copyright law to authors: the exclusive patrimonial rights to reproduce, to

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