Access to Knowledge / доступ к знаниям – How digital is changing the norms of information sharing.

Benjamin White, Head of Intellectual Property, British Library
Бенджамен Уайт, Британская библиотека
“I’m not sure I can help you—all your issues seem to be copyright-related.”
Libraries, Education and Knowledge

€26 Billion pa
Propitious Public Infrastructure
We were scoping out requirements when we were approached by Microsoft. They wanted a drop dead demonstration of some of the new technologies inside Vista. Aligned to a powerful brand, but it needed amazing content.
An Act for the Encouragement of Learning

We were scoping out requirements when we were approached by Microsoft. They wanted a drop dead demonstration of some of the new technologies inside Vista. Aligned to a powerful brand, But it needed amazing content.
We were scoping out requirements when we were approached by Microsoft. They wanted a drop dead demonstration of some of the new technologies inside Vista. Aligned to a powerful brand, but it needed amazing content.
To promote the progress of science and useful arts

We were scoping out requirements when we were approached by Microsoft. They wanted a drop dead demonstration of some of the new technologies inside Vista. Aligned to a powerful brand. But it needed amazing content.
We were scoping out requirements when we were approached by Microsoft. They wanted a drop dead demonstration of some of the new technologies inside Vista. Aligned to a powerful brand, but it needed amazing content.
FREE MOVEMENT OF KNOWLEDGE AND INFORMATION

We were scoping out requirements when we were approached by Microsoft. They wanted a drop-dead demonstration of some of the new technologies inside Vista.
Aligned to a powerful brand.
But it needed amazing content.
We are clearly living through a revolution in the way creativity can be expressed, disseminated and consumed. Yet, to quote from the Royal Society of Arts Adelphi Charter ‘the purpose of intellectual property law should be, now as it was in the past, to ensure both the sharing of knowledge and the rewarding of innovation’ - such a balance being essential to sustain a healthy creative economy and an informed citizenry.

However, whilst the BL would assert that fundamentally in regard to this balance ‘digital is not different’ the advent of digital technology has inexorably altered the way in which citizens and therefore also bodies like libraries and educational establishments interact with rights holders’ information.

We recognise that the ongoing digital revolution is causing fundamental shifts across industry business models and consumer patterns, and is raising broader questions about the traditional balance of rights in intellectual property, between the rights holder and the public good. However it is important that a clear copyright regime for the digital age should steer the development of appropriate business models and technologies – not the other way around. The questions for policy makers and regulators should not be totally conflated with the interests of the consumer or of business.

Much of our copyright framework was designed for an analogue environment: digital developments have challenged accepted practice – while certainly it creates more opportunities for people to access works, it also creates new opportunities to protect works from illegitimate usage.

My talk today will look at the debate as we at the BL see it, and try to unpick what the key challenges are in relation to a copyright regime fit for the digital age. For such is the upheaval across the information industry and creative sectors that it is easy to get distracted by business models or technological developments when trying to address the core issues of what is a copy, what is fair dealing and where the balance should be struck in our legal framework?
What role do exceptions provide?

- Market Failure
- Education
- Freedom of Speech
- Promotion of Culture
- Equality of Access
- Legal and Parliamentary Proceedings
- Internet
Jurisdictional Issues
Cloud Computing
Publisher X who sells to a library
Undermining of Copyright Exceptions
### British Library Analysis of 100 Contracts

<table>
<thead>
<tr>
<th>Service</th>
<th>Yes</th>
<th>No</th>
<th>Silent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Archiving</td>
<td>23</td>
<td>18</td>
<td>58</td>
</tr>
<tr>
<td>Fair Dealing</td>
<td>58</td>
<td>42</td>
<td></td>
</tr>
<tr>
<td>Visually Impaired</td>
<td>2</td>
<td></td>
<td>98</td>
</tr>
<tr>
<td>Interlibrary Loan</td>
<td>2</td>
<td></td>
<td>98</td>
</tr>
<tr>
<td>Exceptions</td>
<td>25</td>
<td></td>
<td>75</td>
</tr>
</tbody>
</table>

EEBO / ECCO etc.

A large part of the pre 1800 corpus of material has already been digitised by ProQuest and Gale.
“On termination of this Agreement the Institution will destroy and will procure that all Authorised Users destroy all content supplied through the Service stored on any digital information storage media, including but not limited to system servers, hard disks, diskettes and back up tapes.”

“On termination of this Agreement, the Licensee agrees to destroy, and will use its reasonable endeavours to procure that all Authorized Users destroy, all Licensed Material stored on any digital information storage media, including, but not limited to, system servers, hard disk, diskettes, and back up tapes.”
Fair Dealing Copying?

“You may not copy the Products in any form.”

“The Licensee may “make such temporary local electronic copies by means of caching or mirrored storage of all or part of the Licensed Materials as are necessary solely to ensure efficient use by Library Staff and Patrons.”

“Users may browse, copy or print reports, but the download facility will not be available.”

But CDPA allows digital copying:

S.17 (2) Copying in relation to a literary, dramatic, musical or artistic work means reproducing the work in any material form. This includes storing the work in any medium by electronic means.
Three Strikes Legislation
Graduated Response
Hadopi Law
Information Society Directive 2001
(aka Copyright Directive)
Copyright Law and Preservation

Info Soc Directive – Art 5.2.c

Member states *may* provide for exceptions or limitations to the reproduction right … in the following cases:

“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.”
Copyright Law and Preservation

UNLAWFUL IN MANY EU MEMBER STATES
<table>
<thead>
<tr>
<th>Category</th>
<th>Countries/Restrictions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Media Silent</td>
<td>Belgium, Bulgaria, Cyprus, Denmark, Finland, France, Ireland, Luxembourg, Netherlands, Poland, Portugal, Slovakia, Sweden (computer programmes excluded)</td>
</tr>
<tr>
<td>Digital</td>
<td>Austria, Cyprus, Czech, Estonia, Hungary, Malta (computer programmes, artistic and musical works excluded), Slovenia (musical works by hand only), Spain, UK</td>
</tr>
<tr>
<td>Paper</td>
<td>Italy (broadcast copies allowed), Lithuania (text works)</td>
</tr>
<tr>
<td>Copy restrictions</td>
<td>Greece 1, Hungary 1 (not entire newspaper), Germany 8, Latvia 1 (not a computer programme), Poland 1, Slovenia 3, UK 1 (not sound, film or broadcast)</td>
</tr>
</tbody>
</table>

* Source WIPO: Study on Copyright Limitations and Exceptions for Libraries and Archives
Technical Protection Measures

TPM circumvention is unlawful so complex circumvention measures put in place at member states level. e.g. In UK permission is required from the Secretary of State.

TPM circumvention only unlawful if an infringing act. i.e. As preservation / education copying lawful circumvention is not an infringing act.

TPM circumvention only unlawful if an infringing act. i.e. As preservation / education copying lawful circumvention is not an infringing act.
CEMENTED MEMBER STATE DIFFERENCES IN THE SINGLE MARKET
• Copyright law not keeping up with technology – and a highly politicised area of law making.

• Copyright law less relevant as main regulator of digital information is contract law.

• 3 strikes legislation – more monitoring of users, higher costs potentially even suspension for libraries.
ACCESS TO KNOWLEDGE BECOMING FRAGMENTED, MORE COSTLY AND UNCERTAIN FOR LIBRARIES AND THEIR PATRONS
How does this improve access to knowledge, creativity and promote learning?
International Federation of Library Associations

We believe that people, communities and organizations need for their physical, mental, democratic and economic well-being, free access to information, ideas and works of imagination.
No Library Exception

Argentina
Brazil
Burkina Faso
Burundi
Cameroon
Chile
Costa Rica
Cote d’Ivoire
Democratic Rep. of Congo
Guinea
Haiti
Iraq
Kuwait
Libyan Arab Jam.
Namibia
San Marino
Senegal
Seychelles
Swaziland
Togo
Yemen
General Library Exception

<table>
<thead>
<tr>
<th>Albania</th>
<th>Lesotho</th>
</tr>
</thead>
<tbody>
<tr>
<td>Angola</td>
<td>Malawi</td>
</tr>
<tr>
<td>Austria</td>
<td>Malaysia</td>
</tr>
<tr>
<td>Bulgaria</td>
<td>Mali</td>
</tr>
<tr>
<td>Cape Verde</td>
<td>Mongolia</td>
</tr>
<tr>
<td>Congo</td>
<td>Nigeria</td>
</tr>
<tr>
<td>Croatia</td>
<td>Oman</td>
</tr>
<tr>
<td>Cyprus</td>
<td>Portugal</td>
</tr>
<tr>
<td>Djibouti</td>
<td>Rwanda</td>
</tr>
<tr>
<td>Greece</td>
<td>Slovenia</td>
</tr>
<tr>
<td>Indonesia</td>
<td>Sri Lanka</td>
</tr>
<tr>
<td>Jordan</td>
<td>Syria</td>
</tr>
<tr>
<td>Kenya</td>
<td>Tunisia</td>
</tr>
<tr>
<td></td>
<td>Tanzania</td>
</tr>
</tbody>
</table>
WIPO

- Treaty for the Visually Impaired
- Treaty for Libraries
- Treaty for Education
Спасибо