

Copyright and Publications for the Digital Future: A Global View of Laws, Access and Practice

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Abstract

This presentation highlights recent copyright and licensing related challenges and opportunities related to digital access with examples from around the world. The COVID-19 pandemic urgently brought to the forefront longstanding issues with digital access, which, in addition to infrastructure factors, include copyright laws and licensing contracts most applicable to physical media, private consumers and in-person teaching. These contributed to issues libraries faced in providing access to their collections even as they explored innovative digital lending and information sharing solutions. As we look toward the future, and legal cases work their way through courts in America and elsewhere related to e-book pricing and digitized collections, the capacity to lend and disseminate knowledge remains bolstered by open access policies and copyright laws designed for digital lending with flexibility toward developing technologies.

I am relatively new to the library world. I hold a multi-disciplinary PhD in the social sciences, and am a “digital anthropologist” by academic background. Part of my academic interests include how people use global technologies locally. While globally, we share networks and technologies like books and e-books, people use them uniquely in their own ways.

At IFLA, I work with the Copyright & Legal Matters committee (CLM), connecting experts around the world on issues of copyright, digital publications, and open access. I also work with our FAIFE committee - on Freedom of Access to Information and Expression.

My work is part research, part advice, and part advocacy in international forums, namely, the World Intellectual Property Organization (WIPO)’s Standing Committee on Copyright & Related Rights (SCCR). We want to promote copyright laws and access policies that enable libraries to collect, store, preserve, and share content, which is what I’ll be talking about today.

As an anthropologist, I’m used to exploring local views, but my own position at IFLA perhaps best offers a big picture “global view”. An example of “big picture” projects my colleagues are involved with is the Library Map of the World (available online), which aggregates statistics about libraries at the country level. It also ties them to UN Sustainable Development Goals and collects stories.

As for Kazakhstan, you can see on the map how many libraries are in the country, and you can imagine the value they bring to their communities. You may or may not see your experiences reflected or represented as I speak. If you do, it shows that other libraries are facing similar challenges. If not, this is an opportunity. I’m here not just to speak, but to understand more about your library, here in central Asia, and how it fits into that global picture. I want to explore that big picture view for the recent past and future of digital access.

The COVID-19 pandemic, our major recent worldwide event, was not a catalyst, but an event that revealed ongoing trends in digital access, as it accelerated the urgency of addressing them. The pandemic was a flashpoint for the challenges libraries will face in the future as they seek to provide digital content.

For libraries, with physical collections closed, books difficult to distribute, and social distancing measures in effect, the pandemic accelerated the impetus to provide access to collections digitally. I explored through a report I wrote in April 2022 on libraries’ experiences with copyright during COVID, from which we received 114 survey responses, and I conducted 28 interviews, altogether with respondents from 29 countries.

Moving to digital during COVID, firstly, meant libraries could not as easily provide technological infrastructure to their communities. Libraries could not serve as in-person physical community spaces, even many developed innovative ways to continue services like children's storytelling and information sharing online. They could not necessarily provide computers and internet access, and people's ability to *access* digital content that libraries could provide became more dependent on their own IT.

To use an example from my own home - I'm from a rural, agricultural area in America. A friend of mine was teaching in a town of about 25,000. Many of his students are from economically precarious families. They didn't necessarily have data plans that could cover the demands of video, and so the school had to arrange for access through an Internet Service Provider (ISP). The ISP initially gave a data-capped version of the Internet, to be used only for schoolwork. This of course proved unworkable. They couldn't give kids a limited amount of data, during lockdown, and expect they would *only* use it for school. Eventually the ISPs provided more data. This was in a place where Internet infrastructure was good, and the challenge was *providing* it. Things were much more difficult in places where Internet connections were not reliable – and these issues remain will remain.

Even if Internet is available, however, libraries faced challenges related to copyright and licensing. They could not provide material on site due to lockdowns. They could not necessarily send articles to institutionally-unaffiliated patrons who would have previously been served as walk-ins. Licenses limited by country posed challenges for universities whose international students and faculties returned to their home countries. Put simply, even if books existed, licensing restrictions and digital rights management put the capacity to use them in doubt.

As our report describes, “83% of responding library professionals - 114 from 29 countries - said they had copyright related challenges providing materials during pandemic-related facility closures.”

When researching the report, we saw questions around the world concerning whether content that could be used on-site in libraries, or in in-person classrooms, could be legally used in online spaces that served similar purposes. It was unclear if educational copyright exceptions covered online use, if educators could discuss and use illustrations from a text, music, or video in an online classroom as they would an offline one.

Content that educators had general legal rights to use, or sometimes that they had received direct permission from rightsholders to use, could not be presented due to technical Digital Rights Management restrictions within platforms designed to protect against unauthorized sharing – particularly audio-visual content. In other words, if a teacher tried to play a video, sometimes the platform wouldn't allow it – even if they had the rights to use it.

Publishers partially mitigated pandemic-related closures by offering expanded access to journals, e-books and other content during the pandemic's early months. However, this was an extraordinarily chaotic period, as libraries and their users had to adjust to any number of new challenges. Libraries and educators' priorities during this time were finding working solutions for existing plans – including providing content to educators for planned courses and research projects - and they were not in a position to radically expand their offerings. By the time people were settling into the 'new normal' for the classroom and library, the offers had ended.

Libraries further ran up against the ongoing challenge that only a fraction of published books are available as e-books. E-book licenses are expensive for libraries, more so than those for private consumers. A physical book can be purchased, owned, and lent. E-books are typically licensed for a period or number of uses, at rates that are exponentially higher than indefinite-period licenses available to private consumers. They are also sometimes blocked from acquiring and lending digital textbooks, transferring the responsibility onto students to pay for content.

In these cases, beyond infrastructural challenges, digital content faced barriers due to copyright, licensing, and other human-made technical challenges designed to restrict the flow of information.

This, in some ways, runs contrary to the spirit of copyright, which has in one part have historically **concerned protecting the rights of creators and rightsholders**. Another strong current in copyright, however, makes provision to distribute works to promote social benefits, including education and scientific knowledge. This goes back to the 1710 Statute of Anne in England, the first copyright law. The United States Constitution grants Congress the power "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." The key words: for limited times. Copyright places limits on rightsholders' rights, because the public has rights too.

These are "limitations and exceptions" to copyright law: rights to quotation, to copy, parody, transformative uses, to create a public domain so that new creators might build on existing works. It places limits on the length of time that you might exclusively have the right to copy work. In the US this is 70 years after the death of the author and has become widely used internationally. These limit uses after the literal death of the author, but also protect the figurative '*death of the author*', to quote the title from Roland Barthes' 1967 essay – that is, they enable readers and creators the rights to make new readings of texts beyond what their creators may have envisioned.

This is the double-edged sword of developed, expansive copyright ecosystems: they tend to have expansive rights for rightsholders, and broad limitations & exceptions for users. Many countries, however, have written into law the rightsholder half, but have not necessarily developed reasonable limitations and exceptions.

This is unfortunate in part because the commercial life of most texts is far shorter than many authors' lifetimes, which has historically been where libraires play a key role in "preservation": making books available after they've left bookstore shelves.

Human Rights and other ideas legal protections or obligations may further supersede copyright law. The most well-known relatively recent success in this area is the Marrakesh treaty for individuals with print disabilities (2013), which enables the production of materials for the visually impaired, and the coordination of access among organizations doing that work, which was difficult to provide commercially. At WIPO SCCR lately, a consortium of African countries has led the way in promoting instruments and toolkits for countries to develop up-to-date limitations and exceptions to copyright.

To help libraries navigate this, IFLA has recently released a reader on Copyright for Libraries. It is available OA from the De Gruyter website and the IFLA repository. Search and you'll find it online, and if you'd like a hardcover they are available for purchase from the publisher. It's 570+ pages, 20 chapters and a tremendous resource on copyright from its history to current, cutting-edge issues like user-generated content, Open Content, and Text & Data Mining, and their applications for libraries

IFLA has likewise produced several recent statements in support of Open Access and related movements. These statements are in part intended to function as advocacy tools, so that people wishing to support Open Access policy have materials to work with. These are topics, further, that IFLA would like to work with you on: if your country's copyright law does not have strong exceptions and limitations, and you would like to develop it, please talk with us. Other IFLA members support Wikimedia groups at libraries to provide infrastructure to create content in diverse languages, based on local knowledge. On a practical, in-library level: *a great place to start with Open Educational Resources* is SPARC Europe's website.

Back to the challenges wrought by shifts towards licensing for digital content, and libraries not "owning" content but paying for subscriptions. As mentioned, libraries are not offered access on comparable terms to consumers and are often offered access under license. These catalogs shift

and change. This poses challenges for libraries. This month, October 2022, Wiley removed 1,300 textbooks from its digital catalogs and only reinstated them – temporarily - after pressure. The removals came just as the term was starting, and forced librarians and educators to quickly reconfigure their courses when available materials suddenly weren't available – then reconfigure them again when they became available. You shouldn't have to keep tabs on this – as a library, as an educator.

In 2020 – the e-book platform DawsonEra ended service. These contracts would have gone unfulfilled had other platforms not hosted its content, and the content - particularly French language content – might have been lost if other platforms could not migrate it.

In several US states, laws have been passed that have sought to compel publishers to provide e-book licenses to libraries at reasonable rates. These have been challenged in court, and some have been declared unconstitutional.

In response to the lack of availability of digital content, some libraries have embraced digitization projects, sometimes under the heading of Controlled Digital Lending (CDL). They have either digitized their own collections or worked with digitized collections of other institutions, locking their physical collections to lend out digital copies on a 1-to-1 basis. From the library perspective, it's an extension of established practice, that is, making legitimately-acquired collections available. These include:

HathiTrust, a consortium where libraires locked down their collections in their entirety to pool their resources, and lent them on a 1-to-1 basis. Not many institutions I talked to used the Hathi Trust, after they opened their own doors post-lockdowns – the physical collections were still too used to be closed off entirely for long.

SciHub, which disregards copyright entirely, was developed by a Alexandra Elbakyan, a Kazakhstani student. If content is unavailable, it is unsurprising that people will develop localized workarounds.

How these practices, legal cases and challenges sort out will shape libraries' relationship to e-books and digital content in the future – including their capacity to acquire and retain content.

These different approaches underscore the extent that there is no single model for licensing, and that many access problems are socio-technical. People are working out on their own, in legal grey areas. Where norms, laws and standards go in part depend on our actions.

In the frontiers are Text and data mining (TDM) exceptions to copyright. TDM requires copying large amounts of content into machine readable databases. Publication in reputable journals generally requires the info to have been obtained legally and ethically.

I love opening books. In the future, I hope physical collections continue to play a key role in libraries' activities. Books are still easy to read and distribute, and digital technologies can be challenging to acquire and maintain. However, digital access will remain a key part of the future of libraries, and law and policy must proactively keep pace with the longstanding historic purposes of copyright, not just to restrict publications for profit, but to make them available for people to use.