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## Kontakt/Contact

Digizeitschriften e.V.  
SUB Göttingen  
Platz der Göttinger Sieben 1  
37073 Göttingen

✉ [info@digizeitschriften.de](mailto:info@digizeitschriften.de)

## **Position on User Rights in Electronic Publications**

### **I. Introduction**

The Position Paper is a result of the discussions by the Steering Group of the European Copyright User Platform (ECUP) regarding the user rights in electronic copyright. The European Copyright User Platform consists of the 37 Library Associations which are full members of the European Bureau of Library, Information and Documentation Associations (EBLIDA).

The purpose of this document is to outline and justify the lawful uses of copyrighted works by individuals and libraries in the electronic environment. It is intended to open the discussion with copyright owners and serve as a reference document for information professionals.

### **A balance should be preserved**

Each year, libraries in Europe provide a range of services to millions of researchers, students and members of the public. These services are performed in conformity with the national copyright laws. The new technologies have made it possible to provide these services even more efficiently. Libraries recognise that the new technologies and especially the possibility to copy copyrighted materials with such an ease, poses uncertainties for an economic return to the copyright owners.

The uncontrollability of electronic information is a fear which libraries share with the copyright owners. However, this should

not mean that the reaction of these uncertainties lead to an overly restricted use of electronic information by users and information professionals. It should not be forgotten that libraries provide an uniquely controllable environment through which publishers make their products available to the public at large.

The nightmare future for libraries is one in which nothing can be looked at, read, used or copied without permission or payments. When one takes into account that the cost of scientific books and journals have increased by 10 percent or more annually, this does seem unreasonable. Also the fees charged for electronic information licences are generally higher than prices for the equivalent books or periodicals and most of the time these are only provided under the condition that the hard copy is being purchased as well. In an evolving electronic environment this could mean that information resources are purchased and accessible only to those libraries and members of the public who are able to pay. This public information systems that libraries have developed would be replaced by commercial information vendors and a diminished scope of public rights would lead to an increasingly polarised society of information have's and have-not's.

Since the last century carefully constructed copyright guidelines and practices have emerged for the print environment to ensure a balance between the rights of the users and the rights of the rights owners in copyrighted material. This balance should remain in the digital environment. As more information becomes available only in electronic formats, the user's legitimate rights to use copyrighted material must be protected. The benefits of new technologies should be available for all - the public, libraries and the copyright owners.

## II. Principles

The following principles have served as a point of departure for drawing up this Position.

### Guiding principle

The user has the right to have access to copyrighted material and to make a copy for private use and research of educational purposes. It is the duty of the library to provide access to copyrighted material and the library should have the possibility to do so without infringing the principle of the 'normal exploitation of a work'.

In an electronic environment this means that:

Without infringing copyright, the public has a right to expect

- to read or view publicly marketed copyrighted material, on-site or remotely;
- to copy a limited number of pages electronically or on paper for private use and research or educational purposes.

Without infringing copyright, libraries should be able

- to use electronic technologies to preserve copyrighted materials in their collections;
- to provide on-site access to electronic copyrighted material;
- to provide off-site access to registered users;
- to provide on-site copies of copyrighted material in electronic form or in paper form.

Users and libraries have a right to expect

- that government publications and public domain material in electronic format is available without copyright restrictions;
- that the digitisation of public domain material can be performed without copyright restrictions;

- that the terms of the licences for copyrighted laws concerning the lawful activities by libraries and users;
- that copyright control systems are able to differentiate between legitimate and illegitimate usage;
- that the licensors put a licensing system in place which will enable the library to manage its collections of licences efficiently.

**Rights owners can expect**

Libraries will strive to ensure:

- the implementation of legal and technical safeguards to comply with contractual limitations;
- the notification to rights owners of infringements by users, although they cannot be held responsible for the intentions of the end-users once they have acquired the information;
- that their users are informed about the copyright restrictions in electronic information.

**III. Lawful library activities concerning copyrighted material**

The point of departure is by four types of library, open or closed user groups, registered or unregistered users and on-site or off-site access. Matrices of the activities have been enclosed.

**1. Definitions**

Libraries

National library

University library

Public library

Other libraries (special libraries)

Internal library activities

Activities necessary in order to preserve and organise information and publications in printed or electronic format efficiently.

Open user group

An open user group is defined as a group of unidentifiable individuals: the general public.

Closed user group

A closed user group is defined as a clearly defined group of individuals who have a formal relationship with the organisation.

Registered users

A registered user is defined as an individual who is a member of a library or who has received a password.

Unregistered users

An unregistered user is defined as an individual who is not known to the library.

On-site access

An on-site activity is defined as every activity within the premises of the building that provides the information or within a controllable environment.

Off-site access

An off-site activity is defined as every other activity outside the premises of the library or outside a controllable environment.

Allowed

An activity is allowed when it is not perceived as a copyright infringement. This means that the library does not have to ask for permission for the activity from the copyright owner i. e. it does not require a licence.

Licensed

The use of material which is obtained in electronic format from the publisher.

Viewing

This activity includes accessing, browsing, searching, retrieving.

## 2. Activities

### Internal library activities

To meet the demands of the users, libraries should be allowed to digitise, permanently store and index material which cannot be obtained in electronic format from the publisher. Libraries should also be allowed to permanently store, index and make an archival copy of the electronic publications provided by the publisher.

### Open user group registered on-site

This user group refers to an unidentifiable group of people who become identifiable once they have registered themselves with a library and who are accessing the library electronic collection from the premises of the library or from within a controllable environment.

National, University and Public libraries should be allowed to provide these users with the possibility to view full text electronic material and to copy a limited number of pages electronically or on paper of material, digitised by the library, or material obtained in electronic format from the publisher. The "Other libraries" category is perceived as not giving access to persons other than their staff or a defined group of people.

### Open user group unregistered on-site

This user group applies to a library with a public library function where people can walk in and out without identifying themselves. These libraries should be allowed to provide this user group the possibility to view full text electronic material and to copy a limited number of pages on paper of material digitised by the library and material obtained from the publisher.

Open user group registered off-site

This user group refers to an unidentifiable group of people who become identifiable once they have registered themselves via a password or by signing an electronic form and who are able to access the library collection from outside the library premises or outside a controllable environment.

Libraries should be allowed to provide these users with the possibility to view full text, copy a limited number of pages electronically or on paper of the material they digitised themselves. Royalties should be paid to the rights owners for Electronic Document Delivery services. These services should be provided on a pay-per-use basis. For the electronic products obtained from the publisher, libraries should be allowed to provide this user group with the possibility to view one page of the requested copyrighted material. Under licence, the library should be able to provide this user group with the possibility to view full text and copy the material electronically or on paper. For Electronic Document Delivery services, libraries should pay on a pay-per-use basis and forward the royalties to the rights owners.

Open user group unregistered off-site

Libraries will not provide access to the electronic copyrighted collection to remote unregistered users.

Closed user group on-site/off-site

Libraries should be allowed to provide these users with the possibility to view full text and to copy a limited number of pages electronically or on paper of the material that they have digitised themselves. For the electronic product obtained from the publisher, University and Other libraries should be able to provide to users under licence the possibility to view full text and copy electronically and on paper on-site and off-site and



to make use of the Electronic Document Delivery service of the library.

#### **IV. Legal arguments**

The legal justification for ECUP Position can be found in Article 9 (2) of the Berne Convention. The Berne Convention serves as the world-wide framework for international copyright protection. All EU member states are signatories of the Berne Convention. The Berne Convention sets certain minimum standards of copyright protection. For the purpose of this paper, the most important exclusive right under the Berne Convention is the right of reproduction under Article 9 (1).

"Authors of literary and artistic works protected by this Convention shall have the exclusive right of authorising the reproduction of these works, in any manner or form."

Article 9 (1) refers to "the reproduction of these works, in any manner or form." According to the WIPO Guide to the Berne Convention these words are wide enough to cover all kinds of methods or reproduction, including all other processes known or yet to be discovered. The ECUP Steering Group believes that this includes the making of an electronic copy.

This reproduction right in Article 9 (1) may be limited "in certain special cases", in accordance with Article 9 (2) of the Berne Convention.

"It shall be matter for legislation in the countries of the Union to permit the reproduction of such works in certain special cases, provided that such reproduction does not conflict with a normal exploitation of the work and does not unreasonably prejudice the legitimate interest of the author."

The national legal provisions which permit the photocopying for private use and research or educational purposes are based on Article 9 (2). The most important part of this Article are the words "normal exploitation of a work". The minutes of the

Stockholm conference (1967) give no guidance on what "normal exploitation" is. According to the report of the Drafting Committee, the making of a "very large number of copies" for a particular purpose would conflict with the normal exploitation.

The ECUP Steering Group recognises that the term "normal exploitation of a work" must be interpreted, when in an electronic environment, as permitting a library service which does not compete with a similar service or product obtainable from the publisher. In this case, the "user rights" under copyright must apply. But, for instance, if a library wants to digitise material which is already obtainable in electronic form from the publishers, this activity conflicts with the normal exploitation of the work. It also applies in the case where the library delivers to a remote user an article which the user could have obtained from the publisher. Being in conflict with the normal exploitation of a work should not imply that libraries cannot provide the service. The library should pay royalties to the copyright owners for the material sent to the users.

At the moment, publishers are experimenting with new technologies to satisfy the needs of the market. The trend in publishing is for "on demand delivery" of articles to individual users. Libraries have conducted this service for several years and have delivered articles to individual users by mail, fax and electronically. The conflict with the "normal exploitation of the work" starts once the same service for the same material is being offered by the publisher. If it is not, the service can be continued and should be seen as making a copy on demand for private use or research/educational purposes.

## **V. Conclusions**

The ECUP Steering Group believes that the new technologies and its services do not require a major revision of international and national copyright law at this time. Existing copyright laws

provide for a basis in which users, libraries and copyright owners continue to be well served. The uncertain times ahead should be used by libraries and publishers to experiment, within the controllable environment of the library, with new products and new technologies by way of pilot projects. Moreover, it is perceived as vitally important that libraries and copyrights owners continue to discuss the challenges of the electronic society.