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International Dateline — Copyright and the EU

by **Martin White** (Managing Director, Intranet Focus Ltd, 12 Allcard Close, Horsham, West Sussex, RH12 5AJ, UK; tel. +44 1403 267030) <http://www.intranetfocus.com>

This column is being written as the UK and France continue to fall out over the refusal by the French Government to allow British beef to be sold in French shops. Inevitably, this causes politicians and spin doctors, and in this case many farmers, to question whether the UK would be better off without being a member of the **European Union (EU)**. Given the pro-European stance of the Labour Government, and its majority in Parliament, it is extremely unlikely that there will be a retreat from the EU, and so we will continue to be subject to laws and regulations agreed by a majority vote of the Member States. One forthcoming example is the situation concerning electronic copyright. I want to take most of this column to alert you to an important development in the establishment of a European Union legal framework for electronic copyright, but first you may find it useful to understand a little of the procedures for implementing EU-wide legislation.

One way that the EU establishes a "single market" is to evolve **Directives** on matters that need a legal framework. Once a Directive is approved by the **European Parliament** and the relevant ministers in the Member States there is a period of time, usually three years, to implement the provisions of the Directive in their national laws. Two such Directives, on database copyright and on personal data protection, have already caused quite a headache for users and providers of information. Currently, a new and potentially very important Directive on electronic copyright is going through the discussion stage, and since this will be the first major legal initiative in electronic copyright, it will probably set a precedent elsewhere in the world.

Background

The current initiative dates back to a decision of the **World Intellectual Property Organisation (WIPO)** in late 1996 that there should be changes to copyright legislation which addressed some of the specific problems of electronic copyright, as existing legislation made no differentiation between the copyright in printed and electronic publications. Current licence agreements for downloading electronic articles are written within a framework of contract law, rather than copyright law, and obtaining redress under contract law can give rise to some substantial problems. The view of the Commission is that there needs to be uniform copyright legislation in the EU to facilitate both the legal use of copyright material to affect easier prosecution

where there is a breach of copyright.

In January, 1997 the **European Commission** submitted to the European Parliament a proposal for a Directive on the harmonisation of certain aspects of copyright and related rights in the Information Society. (COM(97) 628 Final of 10 December 1997) To say that the proposals created uproar would not be an understatement, as in trying to create a uniform copyright environment in the EU the Commission seemed to have not only given a considerable amount of discretion to the Member States, but also proposed almost draconian rules on private copying and on situations where a copy is inadvertently made during the course of handling digital information through servers on a network.

In February 1999, after a considerable amount of public and private debate and negotiation, the Parliament proposed a considerable number of amendments to the proposal. The Commission subsequently accepted most

of these, and published an Amended Proposal (COM (1999) 250 Final) on 21 May 1999. The amended proposal is set out in such a way that the amendments are quite easy to identify.

Current open issues

Probably the most important change is to Article 5, which now states that exempted from the provisions of copyright are "temporary acts of reproduction ... such as transient and incidental acts of reproduction which are an integral and essential part of a technological process, including those which facilitate effective functioning of transmission systems, whose sole purpose is to enable use to be made of a work or other subject matter and which have no independent economic significance."

Under this revised Article it would no longer be a breach of copyright to download an article on a server prior to passing it across the network to the user who had requested it.

Another contentious section has been Article 6, which deals with the extent to which rights-holders can enforce their copyright

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Biz of Acq — Selecting and Processing Electronic Resources: How to Plug Librarians into the Workflow

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Column Editor's Note: *Electronic resources take up more and more of our time and attention as acquisitions librarians. Because of their particular nature as digital entities, and because of the complex acquisitions arrangements they often require, electronic products are forcing librarians to rethink and reform procedures for selection and integration of materials into the collection. In this month's column, Rob Withers, Electronic Information Services Librarian at Miami University, draws on a new survey of librarians, as well as recent library science literature, to describe how libraries are adapting acquisitions and collection development processes to the digital age. —RR*

Libraries have been adding a growing number of electronic resources to their collections, and the availability of resources over the Internet has fueled this proliferation. In his 1996 article, **Gene Allen** notes that librarians

he surveyed predicted that 10 years from the date of his survey, expenditures for electronic resources would be anywhere from 5% to 25% of their budget.¹ Online products do not "play by the rules" set for selecting, ordering, and processing library materials because: Technical prowess may be needed to assess the feasibility of a product in a particular environment; The library does not receive physical copies to inspect and process; Electronic resources may be bundled together with dozens or even hundreds of products; Online products may be purchased by a consortium, rather than by a single institution.²

Adding electronic resources to the collection therefore poses a number of ques-

tions to those involved with acquisitions: Who should be involved in evaluating resources prior to order placement? How are electronic resources paid for? How are they inspected and checked in when they become available? Who is notified after they have been received? What changes in job descriptions are needed to ensure the ability to select, order, and process these materials?

To answer these questions, this column will rely on a survey of existing literature concerned with processing electronic resources. In addition, responses to a questionnaire posted to **AcqNet-L** and **Collddev-L** will help to explore the ways that libraries are coping with the challenges posed by the addition of electronic resources, particularly Internet resources, to their collections.

Selecting and Ordering

In an article on electronic resources, one librarian stated: "Selections: they're not just for collection development librarians any more."³ Responses to a survey posted to **Collddev-L** and **AcqNet-L** support her statement. A majority of respondents (89%) indicated that collection development librarians selected electronic resources. However, 84% of respondents indicated that other types of librarians could also select items. 72% reported that reference librarians could select, 44% reported that electronic resources librarians could select, 16% reported that systems librarians could make selection decisions, and 17% of institutions reported that selection decisions could be made by other positions. Smaller libraries at which no position dedicated exclusively to collection develop-

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through technology, and there has been a concern that rights-holders may use some form of anti-copying technology to prevent even legally-permitted copying.

An important change is the provision for compensation to rights-holders when a copy is made for the purposes of private copying, and illustration for teaching and scientific research. Libraries are now also able to make copies of items for the purposes of archiving and conservation purposes. In the initial proposal, libraries would be in breach of copyright for these activities.

There are quite a number of detailed changes in other articles, but in the main these do not have a substantive impact on libraries and information services. One final addition to the Amended Proposal is the establishment of a **Contact Committee**, set up with representatives of the competent authorities of the Member States, to monitor progress with the

implementation of the Directive, provide a forum for the exchange of information, and to examine development in the sector. This approach is similar to the mechanism set up under the **Data Protection Directive** and is very much to be welcomed.

Timetable for implementation

Every six months a Member State in rotation takes the responsibility of acting as the President of the European Commission, and currently it is Finland, which was keen to have pushed through the directive as part of its commitment to information society developments. Approval of the Directive will have to be made by the **Council of Ministers** of each Member State responsible for what is called the **Internal Market**. A **Council Working Party** was set up earlier in the year to work through amendments suggested by the Parliament and other groups.

At a meeting in September, discussion was mainly focused on **Article 6** and it seems that libraries and other user groups' concerns were taken on board by almost all national experts,

so that a favourable new wording of Article 6 is likely to be proposed. The next meeting of the working party on the Directive was held on 28-29 October in Helsinki, and under discussion were the evolution of conditions of contracts and licenses concerning digital use, technological protection systems and rights management information, liability and the institution of blocking illegal distribution of protected works, and the question of applicable law in the digital environment.

A status report will be presented at the **Internal Market Council** on 7 December. It seems now that the Finnish presidency will not be able to reach a political agreement or common position in this year and that the dossier will move on to the Portuguese presidency, though little change in direction or commitment is likely. The Portuguese presidency plans to reach a political agreement/common position in March 2000. This means that it is likely that the Directive will have to be implemented by Member States in 2003.

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ment existed were most likely to report selections made by someone other than a collection development librarian. Some larger university and public libraries mentioned that assistant directors participated in selection decisions, as well.

Selection decisions undergo at least some review at all responding libraries: 30% reported that selection decisions were "sometimes" reviewed and 61% that they were "always" reviewed. The person or persons responsible for reviewing decisions vary enormously. As one person noted, the need to "worry about implementation, access, copy-right, and quality control" often means that several individuals with different perspectives must assess each electronic product.⁴ Of those libraries responding to the survey, 45% indicated that decisions are reviewed by a committee. At smaller libraries serving colleges and community colleges, this percentage was lower—17% and 33%, respectively, whereas 72% of larger university libraries used a committee to evaluate decisions. Of those institutions not relying on a committee, 14 required approval from a department head or director, one required approval from a systems librarian, and one required approval from an electronic resources librarian. Make-up of the committees that approve orders varies, but may include systems librarians (17%); electronic resources librarians (10%), or acquisitions librarians (2%). Of those libraries that only sometimes evaluated decisions, the primary criteria used to determine which decisions are reviewed are cost (75%), compatibility with library hardware/software (62%), cross-disciplinary coverage (55%), and consortial purchases (58%).

Evaluating electronic products is difficult without using the product. As one librarian observes, assessing electronic products can require gauging layout, graphics, audio/video components, ease of use, and response time. She suggests that many librarians rely on thirty-day trials, and results of our survey indicate that 96% of users sometimes take advantage of trial offers.⁵ Only slightly less popular are demonstrations, which 86% of libraries used. Approximately a third of responding institutions, particularly those with less extensive collections, sometimes visit other libraries that have the product. One institution occasionally uses interlibrary loan to obtain multimedia products.

A variety of pricing structures exists for electronic resources: libraries may pay for a single item, a package of items, or a combination of print/electronic subscriptions; they may purchase individually or as members of a consortium; and they may pay for a site license, or for a product limited to a certain number of simultaneous users.⁶ The types of funds used to pay for electronic products are as varied as the purchasing options. Libraries rely on a mix of funds to pay for electronic products. Of those libraries responding to the survey, 70% had a fund or funds devoted to electronic resources. In several instances, these funds were used for all electronic products, but most libraries utilize these funds for resources which cross disciplinary boundaries or are general reference resources. Also used are serials funds for a particular discipline (37%), monographic funds for a particular discipline (33%), general serials funds (34%), and general monographic funds (23%). As one author speculated in her 1998 article, most libraries rely on electronic funds for package deals including items relevant to many fields, but ordinarily use discipline-specific funds for other resources.⁷ Two-thirds of libraries surveyed used a combination of these types of funds; 29% used a separate electronic resources fund for all purchases, and 5% relied on serials funds. Institutions relying solely on one fund tended to be smaller, but did include eight university libraries. Surprisingly, although electronic purchases are essentially serial in nature—in that they require a continuing commitment of funds—nonetheless monographic funds are widely used for such purchases.

Most libraries cannot use funds from the materials budget for software/hardware. In his study of 15 Midwestern university libraries, Norman found that only 22% of libraries could purchase hard-

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So why, you may ask, am I filling a column in 2000 with all this information?

The reason is because the new Directive will create a framework for licence agreements for downloading and using electronic material, and even though it may be several years before the law has to be complied with, it would make good sense to start now, rather than change the agreements, and internal procedures, in a couple of years' time. If you want to monitor developments, then you need to bookmark just one Web site, and that is www.eblida.org. EBLIDA is an umbrella organisation for library, documentation and archive organisations in Europe, and also provides the Web site for the **European Fair Practices in Copyright** campaign.

Other news

The management of electronic journals is still very much a hot topic in the UK. A new email list has been set up in the UK especially for those involved in developing electronic collections of information in the UK (and beyond). Topics include collection development strategies, identifying/assessing/acquiring content, collaborative collecting at local/regional/national levels, and other topical aspects of electronic collection management. More information can be obtained from alicia.wise@kcl.ac.uk. The **UK Serials Group** ran a very successful conference on the promotion and management of electronic journals in October 1999, and some of the papers will appear in *Serials* in due course. The general view of the publishers and librarians present was that electronic journal availability and use was much greater than might have been anticipated at even this time last year. The **UKSG Annual Conference** will take place at the **University of Keele** on April 10-12, 2000. (www.uksg.org). Finally, I had hoped to be able to comment on the merger of the subscription agency activities of **Swets** and **Blackwells**, but the agreement has still not been finalised, though it is anticipated that this will take place towards the end of November.