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Stellungnahme des Deutschen Bibliotheksverbands e.V. (dbv) bei der 26. Sitzung des Ständigen Urheberrechtsausschusses der Welturheberrechtsorganisation "World Intellectual Property Organization", Genf, 16. - 20.12.2013

Der Deutsche Bibliotheksverband nimmt als "Official Observer" an der 26. Sitzung des „Standing Committee on Copyright and Related Rights (SCCR)" vom 16.-20.12.2013 teil. Es geht u.a. um urheberrechtliche Ausnahmeregelungen für Bibliotheken und Archive im internationalen Recht. Die Stellungnahme wurde am 18.12.2013 von Dr. Armin Talke in englischer Sprache vorgetragen.

Thank you, Mr Chairman,

I congratulate you on your election as chair. I speak on behalf of the German Library Association, representing 2000 libraries in Germany.

We wish to use this opportunity to highlight a study published by the European Commission this week on the suitability of existing library and archive exceptions in our region. This study, completed by Belgian law firm De Wolf and Partners, paints a dire picture of the adequacy of the InfoSoc Directive exceptions for libraries in the EU in the digital environment. It identifies the lack of cross-border application of exceptions for libraries, and the patchwork of national laws, as preventing libraries from fulfilling their functions, and collaborating across borders, in an increasingly borderless world.

We would like to quote from the report: "Imagine a national library digitizing its collection of newspapers from the 19th and 20th century, in the frame of a Europeana project to put on line newspapers relating to the construction of the European Union after 1945. It makes no doubt that the on-line dissemination of the newspapers, still protected by copyright, will require authorization of the copyright owners in all Member States. Depending on the national copyright law applicable to the library, the conditions to digitize the newspapers will be either exempted by an exception or not... Indeed, the more newspapers will be digitized, the more they could be of some use for digital projects. Should some libraries be impaired in their efforts to digitize parts of their collections due to lack of harmonization of the exceptions to the benefit of libraries and archives, all cultural heritage institutions will not be on equal footing in such trans-European projects. For all these reasons, more efforts should be put on increasing the harmonization in relation to the exception for certain acts of reproduction made by libraries."

Libraries and Archives face a problem: There is a high level of international copyright protection. On the other hand, there is no such uniformity of limitations. Limitations and exceptions are a patchwork of different national legislations. For every library service crossing borders, that means: To act legally, library staff has to know about the limitations and exceptions not only in their own country - the country of origin, but also in the country of destination of that service.

Some examples: In Germany, e.g., in 2001 a library has been sued for sending digital copies to other countries. The IPA delegate mentioned a decline in cross border document delivery. That is probably the truth. But it is a consequence of legal restrictions or legal uncertainty.

Another example: For orphan works, we have an EU directive and a mutual recognition of national laws on orphan works. But when a library puts orphan works on the internet- on the world wide web-, they will be visible in the whole world. As long as we don't know if making available orphan works is allowed in every country, there will be at least a legal limbo.

Another point of cross-border library issues is the "international exhaustion" of the distribution right, which is connected also to the point of "parallel importation". As long as countries have only national or regional exhaustion – like in the EU, libraries that buy books in other countries cannot be sure that they are allowed to lend them to their patrons. An example: A special research institution in Germany, let's say a research on intellectual property in Munich – buys books in India or Mexico, or the USA – can they lend those books? Not, if the rightsholder did not agree on the distribution within the EU. On the other hand, in Switzerland they have international exhaustion: An institution in Geneva – let's say the WIPO library – which buys books in any country, can lend them to whoever they want.

Libraries that help to build up research infrastructures need legal certainty and freedom to buy their resources wherever they need to. This can be a cross-border issue, especially if we take a look at worldwide interconnected cultural or research institutions. The branch in Germany (e.g. of Goethe-Institut) should be able to send books to their branch in Bogota, Nairobi or Sidney. That applies the same, however, to Institutions like the Kennedy Institute, Instituto Cervantes, Alliance Française or the British Council. To enable all this, we need balancing not only of exceptions and limitations, but also of exhaustion. In every country, there should be international exhaustion.

There are special issues to mention with respect to electronic resources. Respective to the German Library Index, in university libraries, in 2012 around 45 % of the resources were electronic. In technical universities, the portion of electronic resources is even much higher. In the electronic world, the problem is: resources usually are only available after agreement on license stipulations formulated by the rightsholders, that means: contracts are concluded. Contracts eventually can override the limitations and exceptions we agree on in this committee.

When WIPO member states agree on some limitations and exceptions here, this has to apply not only to paper books but also on electronic resources online. So the countries should be obliged to implement the limitations agreed on here in a mandatory way. Relying on the market to deliver e-books to library readers could potentially dictate unreasonable terms and conditions to libraries or transform public lending into another commercial service provided by the publishers.

That brings us to the problem of Technical Protection Measures (TPMs): libraries and archives should not be restricted in fulfilling their functions. Services that are allowed should not be prevented by technical protection measures...and even less those TPMs themselves should be protected by law.

Der Deutsche Bibliotheksverband e.V. (dbv)

Im Deutschen Bibliotheksverband e.V. (dbv) sind ca. 2.100 Bibliotheken aller Sparten und Größenklassen Deutschlands zusammengeschlossen. Der gemeinnützige Verein dient seit mehr als 60 Jahren der Förderung des Bibliothekswesens und der Kooperation aller Bibliotheken. Sein Anliegen ist es, die Wirkung der Bibliotheken in Kultur und Bildung sichtbar zu machen und ihre Rolle in der Gesellschaft zu stärken. Zu den Aufgaben des dbv gehören auch die Förderung des Buches und des Lesens als unentbehrliche Grundlage für Wissenschaft und Information sowie die Förderung des Einsatzes zeitgemäßer Informationstechnologien.

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