

# WIPO STANDING COMMITTEE ON COPYRIGHT AND RELATED RIGHTS

31<sup>st</sup> Session: Geneva, 07 – 11 December 2015

## Agenda item 6: Limitations and exceptions for libraries and archives

### Lending and E-Lending

Thank you Mr. Chair for the opportunity to address the Library lending right.

I am talking on behalf of EBLIDA, an independent umbrella association of library, information and documentation associations in Europe.

The principle of exhaustion, laid down in Art. 6(2) of the World Copyright Treaty 1996, is implemented in the national legislation of all Contracting Parties. Thus, the library that acquires it can do with the media as it sees fit, for instance lending the material to its patrons, since the transfer of ownership with the consent of the author has exhausted the author's distribution rights.

Lending right does not as yet apply to the lending of e-books to the public in the European Union. Usually libraries are not able to acquire the digital files themselves, but must **subscribe under licence** to publishers' online platforms or databases containing e-books (or other types of digital works).

Under the current legal framework in the European Union Member states, the purchase of access to and the subsequent online lending of digital files (e-lending) is generally regarded as a communication to the public **requiring authorisation by the author (or other rights holder) and not yet subject to an exception.**

As a result, European access through public libraries to e-books from multinationals is worse than in the United States, Canada and Australia. It is comparable to access in South Africa.

In Austria of all the e-books available to individual consumers to buy directly, only some 60% are available for libraries to acquire for e-lending.

In Germany, public libraries are permitted to license e-books from just three international publishers, but only English language titles published in the United States and not their German imprints.

In that context, libraries are losing their ability to provide content to the population they serve because they are experiencing refusal by providers to include certain e-book titles in packages, removal of certain e-book titles from subscription packages, and not negotiable terms for access.

Several court ruling suggested that exhaustion could apply to digital files, while the Court of Justice of the European Union is currently studying the question whether "*lending*" in the *EU rental and lending Directive includes making digital copies of various books available for users to download in such a way that the downloaded copy becomes unusable after a certain period and during that period the original copy cannot be downloaded by others.*

To mitigate legal uncertainty, an international solution **providing a minimum level of international standards in lending exceptions (including e-lending exception)**, would help to create a true knowledge society.

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