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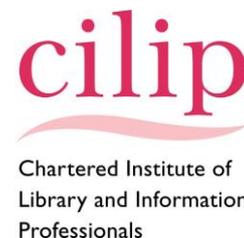
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WORLD INTELLECTUAL PROPERTY ORGANIZATION

WIPO Standing Committee on Copyright and Related Rights (SCCR/31) 7-11 December 2015

Intervention by CILIP: the Chartered Institute of Library and Information Professionals

LIBRARIES AND ARCHIVES LIMITATIONS AND EXCEPTIONS

Topic 3 Legal deposit

Thank you, Mr. Chairman. Before I start on digital deposit I would like to emphasise with regard to reproducing copies that it is clear there are different purposes for reproducing copies. So it is not about reproducing copies only for safeguarding, it is also for document supply in response to requests made by individuals under exceptions for private study for research and so forth for non-commercial purposes. Those are the main reasons.

However, on legal deposit, as IFLA has said, legal deposit has a vital role to play in the preservation and access of materials published and produced in all countries, so each needs to have legislation requiring publishers and multimedia producers to deposit their output with designated libraries responsible for collecting materials in all formats that are published or released in their countries.

Publishing and multimedia production has changed exponentially due to digital technology, particularly on the World Wide Web. Self-publishing, user-generated content and social media have become integral to people's everyday lives worldwide as my colleague from the SAA has said. Not only is there more material available online than ever before, but such information is also much more transient: the British Library's web harvesting data for 2013-14 shows that after two years, about 60% of the content has gone or is unrecognisable. In 2014 we lost half of the UK website addresses in one year.¹ Unless material from websites is harvested regularly, systematically and substantively by legal deposit libraries and, in relation to online government information, by national archives, it will be lost for good. Yet so far, only roughly half of the world's countries have implemented a legal framework of some kind for the legal deposit of non-print materials and web-harvesting.

However, the copyright aspects of electronic legal deposit give rise to an urgent need for international agreement on the copyright issues involved to (1) recognise that links from a country's harvested websites lead all over the world to materials created in other countries and (2) ensure that legally deposited copies of electronic materials that have entered the public domain, or whose

¹<http://britishlibrary.typepad.co.uk/webarchive/2015/09/ten-years-of-the-uk-web-archive-what-have-we-saved.html#sthash.lpPxHxJg.dpuf>

rightholders have waived their copyright or made them available under Creative Commons licences, do not remain in dark archives permanently inaccessible online from around the world.

For example, a perverse effect of the UK's legal deposit regulations of 2013 is that, not only are any copyright waivers or Creative Commons licensing that rightholders may have put in place ignored, but far worse, in contradiction to the European Term Directive and the UK's own copyright Act, the legal deposit regulations create a dark archive, fine in itself for deposited electronic works while they are in copyright, but in the UK all of the content of this dark archive is subject in all practicality to perpetual copyright in all legally deposited digital materials, including harvested websites. Few people can see this material other than on the premises of UK Legal Deposit Libraries even long after any rights have expired and are no longer owned by anyone. Thus, a website may contain public domain material such as 17th century texts, but if the primary website is discontinued, a harvested legal deposit copy of the whole website with its embedded documents and links may become the only available digital source for that 17th century content. However, despite being public domain content, on the Web you will not ever be able to see more than an image of the home page and in a UK Legal Deposit Library you won't be able to get more than print-out, not a digital copy, from its content.

The copyright issues surrounding cross-border online access to, and usability of, legally deposited e-materials will have a significant impact on the value of the preserved collections in the national deposit libraries and national archives in years to come. We note that in the Conclusions to SCCR/26 distinguished delegates had expressed differing views on the need to include legal deposit with exceptions and limitations. We suggest that it would make sense for the cross-border online communication to the public and hyperlinking aspects of electronic Legal Deposit and web-harvesting to become a sub-topic of the Preservation topic with a view to finding an international solution meeting a common fair practice copyright standard consistent with existing copyright law.

We thank the Member States for their proposals and hope this Committee's discussions will bear fruitful outcomes. We welcome the EU Commission's intention to "ensure that the EU framework on exceptions that is relevant for access to knowledge, education and research is effective in the digital age and across borders," expressed in its Communication on modernising copyright released yesterday, and would like to see such intentions adopted at international level by this forum.

Thank you Mr Chairman.