

CENL Statement on Cross-Border Access and the Copyright Acquis

The Council of European National Librarians represents the national librarians of the member states of the Council of Europe. National libraries have an important role to play in supporting national cultural heritage through advocacy on research issues, and in the digital world are committed to building an integrated digital national library of Europe for the benefit of European culture and learning.

The objectives of CENL's member institutions are to make their collections available, not just to citizens of their respective member states but digitally to citizens of other countries and certainly throughout Europe on a cross-border basis. The benefits of digitising, and making available online, large numbers of 20th century works are manifold – economic, cultural and social. The current European legal framework however creates a situation where it is not possible to provide such services unless the material is in the public domain. This is due to differing legal practices within each of the Member States and the lack of unifying European legislation to allow cross-border use of material in the information society.

Some examples of barriers that the current legal framework creates to the efficient operation of these online services in the single market are as follows:

- Individual clearance of copyright works for mass digitisation is prohibitively expensive to administer due to the volume of permissions required, however very few member states have laws allowing digital libraries to be created.
- Collecting societies across Europe have differing legislative and non-legislative remits, mandates and repertoires. A minority of countries¹ have solutions for mass digitisation but currently no Member States have the laws to allow collecting societies to offer licences for digital library purposes outside of their own territory. Such use requires European level legislation.
- Users, such as students, legally accessing material from within one country in line with national limitations and exceptions find themselves unable to access the same research content under a limitation and exception in another member state. For example a student in Spain can make a copy of a sound recording for their own private research purposes but not if they are in the UK.
- Much material held by a national library is unique, rare and not necessarily produced with any commercial intent in mind. The solutions for this category of materials, such as private letters, oral histories, company archives etc are not necessarily the same as for commercially produced works.
- The activities of collecting societies are shaped by national jurisdictions, tradition and language, and yet the collections of many national libraries are international reflecting the varied history of Europe. Any solutions to facilitate mass digitisation must be offer a practical solution to clearance of rights from other continents.

¹ France, Sweden, Denmark and Finland.

The result of this is that a truly pan-European online service such as Europeana is unable to provide access to all the content that it could as currently the means to acquire the necessary permissions for online services are either hugely complex or in the case of collective licensing currently not legally possible in most member states.

Recommendation

It is essential that the European copyright regime should support mass digitisation and that European culture should be available online to all citizens in the European Union. To this effect we would recommend the Commission, Parliament and Presidency evaluates at a European level the benefits of extended collective licensing as well as other solutions such as the French solution to mass digitisation.²

The Commission should also evaluate the issue of non-harmonised limitations and exceptions in the Information Society and the barriers this presents to the strengthening of the single market.

² La loi relative à l' exploitation numérique des livres indisponibles du XXème siècle

