

Copyright in the European library debate

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DOI: 10.3302/2421-3810-201702-051-1

Introduction

2017 was a year of celebration for the European Union. 60 years ago, on 25th March 1957 the Treaties of Rome composed of the treaty establishing the European Economic Community¹, EEC Treaty, and the treaty establishing the European Atomic Energy Community², better known as Euratom, were signed in Rome (Italy). These treaties marked the will of the six founding members³ to strengthen their links and build a common future.

60 years later, the situation has changed considerably with 28 member-states, soon due to be 27. The Union has different remits and responsibilities, as well as a different way of functioning compared to the past.

Similarly, the evolving landscape of libraries has considerably changed too.

A major factor comes from the internet and more recently from the development of smart technology. For those of you born before the advent of smart technology, can you even imagine what it was like to live, study or work at that time? Not only is it hard to remember what it was like, it is also hard to remember how we actually managed.

For a long time, librarians in different countries perceived the internet not as a new paradigm, but as new material to be treated equally to others that had preceded it, such as LP's, cassettes, VHS, DVD's, Blue-ray, etc. The changes brought about by the internet would be a new challenge to manage, just as those that went before. However, we are still today coming to terms with the essence of the changes. The fact that librarians eventually embraced all the opportunities offered by the internet (and smart technology) is now a large part of their work of promoting free access to information.

Since 1993, the reality of the free movement of people across borders within the EU resulting from the Maastricht Treaty was supplemented a few years later with the advent of an online borderless world. A new world opened up where each and everyone could navigate the sea of information freely without constraints other than the speed of the local broadband connectivity⁴. Living in a borderless world turned into being an online and offline reality.

Yet the reality was not as promising as it seemed, and the myth is being debunked by an *inconvenient truth*⁵ of our dysfunctional and unharmonised legal frameworks affecting EU countries.

English language editing by Majella Cunnane, Eblida Secretariat.

All websites were accessed on 18th October 2017.

¹ Cfr. <<http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=URISERV:xy0023&from=EN>>.

² Cfr. <<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:xy0024>>.

³ Belgium, France, Germany, Italy, Luxembourg, Netherlands.

⁴ Of course there are several other reasons.

⁵ The title *An inconvenient truth* refers to Al Gore's movie raising awareness on global warming and the role of mankind in this change.

Since 1992 and the creation of the European Bureau of Library, Information and Documentation Associations (Eblida), libraries in Europe have been struggling to ensure that the legal framework includes them, and that it doesn't bypass their missions of providing unhindered access to information and knowledge for all.

In such a context, the particular nature of the relationship between copyright and libraries is an excellent example capturing the complexity of the dossier, and a very good reason why libraries need to lobby at European level.

The EU as an organisation

European citizens are largely unaware of how the EU works. Therefore, we will start by explaining how law making is processed, especially through the three key EU institutions and the Lisbon Treaty.

The first institution to start with is the European Commission. This is considered the guardian of the Treaties and «has the monopoly on legislative initiative and important executive powers in policies»⁶.

Within its organisation, the Copyright Unit, having previously been attached to the Directorate for Internal Market, is nowadays part of the Directorate on Communications, Content and Technologies (DG CONECT) notably in charge of the Digital Single Market. The Commissioner Mariya Gabriel (Bulgaria) has recently been appointed as Commissioner for the Digital Economy and Society, replacing Günther Oettinger (Germany).

It is worth remembering here that the primary objective of the European Union is to build a vast single market (also digital), that includes the free circulation of goods, services, people and capital. Therefore, the link between the Copyright Unit working for a great part on the question of the Digital Single Market to DG CONECT makes sense. How libraries are included in this area remains an open question.

The second institution is the European Parliament. Directly elected by EU voters every 5 years⁷, the Parliament represents the interest of the citizens. It works through two main platforms: the work in Committee, to draft legislation, and the work in Plenary to pass legislation.

As explained on the Parliament website «the Parliament numbers 20 committees and two subcommittees, each handling a particular policy area. The committees examine proposals for legislation, and MEPs and political groups can put forward amendments or propose to reject a bill. These issues are also debated within the political groups»⁸.

Political groups are also of specific importance since they often adopt positions that all of their members are supposed to use. To date, the Parliament numbers 8 political groups⁹ from the whole political spectrum.

The third key body, and the most secretive, is the Council of the European Union. It represents the interests of the Member-States in being the voice of EU member governments, adopting EU laws and coordinating EU policies¹⁰. Its members are the Government ministers from each EU country, according to the policy area to be discussed, and each EU country holds the presidency on a 6-month rotating basis.

Other bodies with a consultative function exist: the Committee of the Regions (CoR)¹¹ and the European Economic and Social Committee (EESC)¹² for example. They sometimes produce interesting advice, but their opinions are not legally binding.

The EU institutions roles are included in the *Consolidated version of the Treaty of the functioning of the European Union*¹³ of 2012 that also defines EU competencies (i.e. jurisdictions) that are worth knowing.

Article 2.1 defines the exclusive competence that exists for a specific area (see also article 3) where «only the Union may legislate and adopt legally binding acts, the Member States being able to do so themselves

⁶ Cfr. <http://www.europarl.europa.eu/atyourservice/en/displayFtu.html?ftuld=FTU_1.3.8.html>.

⁷ Cfr. <https://europa.eu/european-union/about-eu/institutions-bodies/european-parliament_en#how_does_the_parliament_work?>.

⁸ *Ibidem*.

⁹ Group of the European People's Party (Christian Democrats), Group of the Progressive Alliance of Socialists and Democrats in the European Parliament, European Conservatives and Reformists Group, Group of the Alliance of Liberals and Democrats for Europe, Confederal Group of the European United Left - Nordic Green Left, Group of the Greens/European Free Alliance, Europe of Freedom and Direct Democracy Group, Europe of Nations and Freedom. Cfr. <<http://www.europarl.europa.eu/aboutparliament/en/20150201PVL00010/Organisation>>.

¹⁰ Cfr. <https://europa.eu/european-union/about-eu/institutions-bodies/council-eu_en>.

¹¹ CoR represents the interests of regions and local governments, cfr. <https://europa.eu/european-union/about-eu/institutions-bodies/european-committee-regions_en>.

¹² EESC represents the workers' and employers' organisations and other Interest Groups (i.e. the Civil Society), cfr. <https://europa.eu/european-union/about-eu/institutions-bodies/european-economic-social-committee_en>.

¹³ Text available in all the official languages of the European Union, cfr. the English version <<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12012E/TXT&from=EN>>.

only if so empowered by the Union or for the implementation of Union acts». The EU has exclusive competence for example on customs unions, monetary policy for Member-States that use the euro, etc.

Article 2.2 defines shared competence that exists for a specific area (see also article 4) «when the Union and the Member States may legislate and adopt legally binding acts in that area. The Member States shall exercise their competence to the extent that the Union has not exercised its competence. The Member States shall again exercise their competence to the extent that the Union has decided to cease exercising its competence».

The shared competence works for example for the internal market, the economic, social and territorial cohesion, consumer protection, etc.

Article 2.5 defines a competence (in specific areas and under certain conditions) «to carry out actions to support, coordinate or supplement the actions of the Member States, without thereby superseding their competence in these areas» as indicated in article 6.

The result is that libraries are neither an exclusive competence of the European Union, nor a shared competence with member-states. They are part of the exclusive member-states (and local government) jurisdictions. There is therefore no library law at European level, but the absence of a law does not mean an absence of rights.

Why copyright matters?

Copyright exceptions and limitations «play an essential role in enabling the delivery of library services to the public and in achieving the copyright system's goals of encouraging creativity and learning»¹⁴.

They are essential for core library activities such as preservation, lending, or making copies of works.

In European Law, copyright is actually scattered over several directives, as shown in the non-exhaustive list below:

- Directive 96/9/EC of the European Parliament and of the Council of 11th March 1996 on the legal protection of databases¹⁵;



25th Anniversary Eblida logo, <<http://www.eblida.org>>

- Directive 2001/29/EC of the European Parliament and of the Council of 22th May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society¹⁶, also known as INFOC Directive;

- Directive 2006/115/EC of the European Parliament and of the Council of 12th December 2006 on rental right and lending right and on certain rights related to copyright in the field of intellectual property (codified version)¹⁷, originally from 1992;

- Directive 2012/28/EU of the European Parliament and of the Council of 25th October 2012 on certain permitted uses of orphan works¹⁸.

A «directive» is a legislative act that sets out a goal that all EU countries must achieve. However, it is up to the individual countries to devise their own laws on how to reach these goals¹⁹. Therefore, directives have a major impact on the law making of individual EU countries.

With this in mind, copyright in being a subcategory of the Internal Market is clearly a shared competence be-

¹⁴ BENJAMIN WHITE, *Guaranteeing Access to Knowledge: The Role of Libraries*, «WIPO magazine», 2012, n. 4, <http://www.wipo.int/wipo_magazine/en/2012/04/article_0004.html>.

¹⁵ Cfr. <<http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1506526964707&uri=CELEX:31996L0009>>.

¹⁶ Cfr. <<http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1506526901239&uri=CELEX:32001L0029>>.

¹⁷ Cfr. <<http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32006L0115>>.

¹⁸ Cfr. <<http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1506526824816&uri=CELEX:32012L0028>>.

¹⁹ Cfr. <https://europa.eu/european-union/eu-law/legal-acts_en>.

tween the European Union and the member-states. The general provisions of EU Copyright supersedes national laws in working towards further harmonisation, and leaves a set of exceptions and limitations at the discretion of member-states for implementation or not.

The way copyright works may be roughly compared to traffic regulations. It is composed of:

- general rules applying to all and compliant with international treaties (such as the Bern convention) that ensuring protection of the author's rights for the exploitation of their works;
- national exceptions that build on national traditions, that are only applicable in a specific country when it is recognised in its legislation (such as the Panorama exception);
- exceptions for certain specific entities (such as publicly accessible libraries in the case of the Rental and Lending Directive for instance) that are within certain limits harmonised at European level.

In European Law however, the approach to copyright has been rather restrictive, and the question of its harmonisation appears limited to the exclusive rights of the creator of an original work (for example, protection of the right up to 70 years after the death of the author). On the other hand, no harmonisation has been introduced with regard to the counterpart of this right, namely the limitations and exceptions, whose sole common provision is to be compliant with the Bern convention's three-step test²⁰.

In effect, the INFOSOC Directive of 2001, the major EU copyright directive so far, established a closed list of 21 exceptions that do not uniformly apply throughout the EU and result in a patchwork of rights that differ from one country to the other.

A few years ago, for instance, the need to regulate "orphan works"²¹ became a pressing issue. Although this was long overdue, the changes brought about by large-scale digitisation shifted the question from a

purely preservation issue to an online access issue. Indeed, if realised, online access to fully digitised material would be a game changer in how Europeans would access common cultural heritage. However, the Directive of 2001 and its closed list of exceptions and limitations didn't leave enough flexibility to deal with this question and quickly showed its own limits. Hence the reason for a new Directive voted in 2012 to specifically deal with this issue. This was unfortunately too restrictive to be effective, leaving Europeana with a 20th Century black hole²².

European law is constructed in stages through several directives with regular updates. In addition, rulings of the Court of Justice of the European Union constantly provide new interpretations of current laws. The recent ruling of November 2016 in the case C-174/15²³ between the Dutch Public Library Association and the Lending Right Foundation in the Netherlands gives a concrete illustration of this. In recognizing that «library lending of electronic books (e-books) may, under certain conditions, be treated in the same way as the library lending of paper books»²⁴, the ruling provides a new way to look at the 2006 Rental and Lending Directive. Although it hasn't been concretely applied yet in any of the EU countries, it could change the functioning of library lending in the near future.

To sum-up and although libraries are not an exclusive competence of the EU per se, they are definitely impacted by the European legal framework. So, libraries are part of the European competence, but by default.

Copyright reform and its impact on libraries

In 2015, in France, the French Publishers Association commissioned a pamphlet to the lawyer of «Charlie Hebdo», Richard Malka²⁵ entitled *2015: the end of copyright? Taking for free is stealing*. The author blatantly equated library to piracy in writing that «If, by virtue of such an exception [for e-lending], one could,

²⁰ The three-step test is for exceptions and limitations to apply «[1] in certain special cases that [2] do not conflict with a normal exploitation of the work and [3] do not unreasonably prejudice the legitimate interests of the author», see *WIPO World Copyright Treaty*, Geneva, 20th December 1996, art. 10, <http://www.wipo.int/treaties/en/text.jsp?file_id=295166#P83_10885>.

²¹ "Orphan works" are works like books, newspaper and magazine articles and films that are still protected by copyright but whose authors or other right holders are not known or cannot be located or contacted to obtain copyright permissions, cfr. <http://ec.europa.eu/internal_market/copyright/orphan_works/index_en.htm>.

²² Cfr. *The missing decades: the 20th century black hole in Europeana*, 13th November 2015, <<https://pro.europeana.eu/post/the-missing-decades-the-20th-century-black-hole-in-europeana>>.

²³ Cfr. <<http://curia.europa.eu/juris/document/document.jsf?text=&docid=185250&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1>>.

²⁴ Cfr. *Eblida briefing on the e-lending judgement of the CJEU*, 19th January 2017, <<http://www.eblida.org/news/eblida-briefing-on-the-e-lending-judgement-of-the-cjeu.html>>.

²⁵ Richard Malka is also a scenarist for several cartoons especially satirical cartoons on Nicolas Sarkozy, former French President.

as a library subscriber, gain access to e-books without any constraints in terms of duration of loan or number of simultaneous readers, why would anyone continue to buy e-books, or even printed books, for that matter? Legalizing piracy would achieve the same result»²⁶.

This lobbying pamphlet of poor quality content, ironically distributed for free, disregarded the reality of library practice, including online. It furthermore gave a misleading interpretation of the 2015 own initiative report²⁷ on the implementation of Directive 2001/29/EC²⁸ written by the Legal Affairs Committee under Greens MEP rapporteur Julia Reda²⁹.

Broadly supported by librarians, the report included proposals such as the recognition of «the right for libraries to lend e-books and give access to their collections», and was eventually voted by a large majority of 445 votes in favour from a total of 751 MEPs.

The growing noise that surrounded the report set the tone of the copyright reform to come with a lot of lobbying activity in an area full of misinformation.

A few months later, on 9th December 2015, the EU Commission Communication *Towards a modern, more European copyright framework*³⁰ recognised the need to «adapt [...] exceptions to copyright rules to a digital and cross-border environment, focusing in particular on those exceptions and limitations which are key for the functioning of the digital single market and the pursuit of public policy objectives (such as those in the area of education, research – including text and data mining – and access to knowledge»³¹.

In response to the Commission's communication and in anticipation of future proposals on copyright, the library and cultural heritage community published recommendations³² designed to update and strengthen justified exceptions and limitations to copyright in the digital age, and to prevent further fragmentation of the single market caused by contract terms and technological protection measures overriding exceptions and limitations offered by law.

On 14th September 2016, after the European Commission published its *Proposal for a Directive of the European Parliament and of the Council on copyright in the Digital Single Market*³³, the library and cultural heritage community underlined the lack of ambition of the Commission's proposal in their statement *Only real reforms can bring EU Copyright rules up to date*³⁴.

Since then, five Committees³⁵ in the European Parliament, namely the Legal affairs (JURI) Committee, that is the lead Committee, the Internal Market and Consumer Protection (IMCO) Committee, the Culture and Education (CULT) Committee, the Industry, Research and Energy (ITRE) Committee and the Civil Liberties, Justice and Home Affairs (LIBE) Committee issued or are in the process of issuing opinions.

Over two years ago, Eblida formed a Library and Cultural Heritage Coalition together with its partners IFLA, Liber, PL2020 and Europeana with a view to improving advocacy for a progressive directive to ensure that libraries can effectively function and best serve their users in this, the 21st digital century.

²⁶ RICHARD MALKA, 2015: *the end of copyright? Taking for free is stealing*, 2015, p. 18, <http://www.sne.fr/wp-content/uploads/2015/09/R.Malka_TakingForFreelsStealing.pdf> (ed. or. *La gratuité c'est le vol. 2015: la fin du droit d'auteur?*, 2015, <http://www.sne.fr/wp-content/uploads/2015/09/R.Malka_LaGratuiteCestLeVol.pdf>).

²⁷ Own-initiative (INI) reports are an important working tool and political instrument for the European Parliament. INI reports often pave the way for new legislative proposals, exploring diverse topics of interest to Members, responding to Commission communications, and expressing Parliament's position on different aspects of European integration. They are thus important tools in the early phase of the legislative cycle trying to shape the agenda. Cfr. <http://www.europarl.europa.eu/the-secretary-general/resource/static/files/Documents%20section/SPforEP/Own-Initiative_reports.pdf>.

²⁸ Also known as the Reda report, cfr. *Report on the implementation of Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society (2014/2256(INI))*, 24th June 2015, <<http://www.europarl.europa.eu/sides/getDoc.do?type=REPORT&reference=A8-2015-0209&language=EN>>.

²⁹ Cfr. <http://www.europarl.europa.eu/meps/nl/124816/JULIA_REDA_home.html>.

³⁰ Cfr. <<https://ec.europa.eu/digital-single-market/en/news/towards-modern-more-european-copyright-framework-commission-takes-first-steps-and-sets-out-its>>.

³¹ See point 2 of the Commission's action plan, cfr. *Ibidem*.

³² Cfr. *"Towards a modern, more European Copyright Framework": Adapting Exceptions to Digital and Cross-border Environments – Recommendations by European library and other cultural heritage organisations*, June 2016, <https://www.ifla.org/files/assets/clm/position_papers/copyright_reform_-_the_library_and_cultural_heritage_institution_view.pdf>.

³³ Cfr. <<https://ec.europa.eu/digital-single-market/en/news/proposal-directive-european-parliament-and-council-copyright-digital-single-market>>.

³⁴ Cfr. *Only real reforms can bring EU Copyright rules up to date: press release*, 14th September 2016, <<http://www.eblida.org/Documents/EU%20Copyright%20Proposals%20-%20Libraries%20and%20Cultural%20Heritage%20Institutions%20Respond.pdf>>.

³⁵ To see the different committees, see the all committees homepage, <<http://www.europarl.europa.eu/committees/en/home.html#>>.

The impact of copyright reform was clearly presented in a briefing document³⁶ displaying on one hand the negative impact on libraries if the reform is restrictive and on the other hand the positive result for libraries and circulation of knowledge if positive reform is achieved.

Dozens of meetings with Members of the European Parliament, representatives of National Governments in Brussels and in member states, as well as high participation in public events to raise awareness on the issues libraries are facing, were instrumental in putting the library on policy makers' radars.

Since September 2017, we have been entering a crucial time in the Copyright reform discussion, with the upcoming compromise text to be discussed in the Legal Affairs Committee (JURI), the lead committee on the dossier. To follow-up closely on it, Eblida created a dedicated copyright reform webpage³⁷ gathering information to improve understanding on the issue, raise awareness on the shared positions of library and cultural heritage institutions in Europe and to provide ways to set-up meetings with MEPs in the JURI Committee. The Library Coalition concentrates its effort on article 3 (Text and Data Mining), 4 (Illustration for Teaching), 5 (Preservation) and 7 to 9 (Out of commerce works).

With this in mind, Eblida also encourages its members to reach out to their national governments who have a say and a strong influence in the debate. The release of several leaks in August and September 2017 coming both from the Estonian Presidency and from several member-states demonstrated the fierce lobbying activities that took place behind closed doors.

That copyright is a contentious issue is nothing new, but the added opposition from major tech and content companies only further adds to current tension between member states.

Conclusion

The impact of the copyright reform proposals on libraries in Europe cannot be predicted as long as the proposals are still under negotiation. Little progress

made on some provisions (such as on Text and Data mining for instance) doesn't equate to the number of counterproductive proposals (such as article 13 on upload filtering). Therefore, making all possible efforts to influence the debate in the most meaningful way is not only a requirement but a duty to try to achieve positive changes for the sector.

Yes, libraries are part of the copyright ecosystem not only in respecting the provisions contained in the law, but also in providing access to content to 100 million EU citizens a year. The 70,000 libraries across the Union form a physical and online public network providing legal access to knowledge and information. Sadly enough, European Directives on Copyright have tended to focus more on harmonising protections offered to rights holders than on the rights given to users of works, and therefore to libraries.

As such, the choice of whether to apply most exceptions and limitations to copyright is left to the member-states. The result is an uneven patchwork across the EU, which is not only disadvantageous to users in countries with narrower exceptions and limitations, but also further complicates cross-border cooperation.

With a progressive reform, libraries across Europe would benefit from a more harmonised set of exceptions and limitations allowing them to better carry out their work in an increasingly cross-border and digital environment. However, and in view of latest developments, this reform could also become a missed opportunity that would set Europe and its libraries back by preventing the free circulation of knowledge.

From a purely economic perspective, libraries matter at European level with their annual acquisition expenditures³⁸ representing nearly 5 billion euros a year. Furthermore, over the past years, several studies³⁹ demonstrated that libraries provide valuable public services, which rather than being costly, are a profitable investment, not only in economic terms but, more importantly, for the return on investment they generate for society as a whole. Therefore, these studies

³⁶ Cfr. *Commission Proposal on Copyright in the Digital Single Market Library and Cultural Heritage Institution (CHI) Amendments (Overview) and Call to action*, Brussels, 8th March 2017, <http://www.eblida.org/News/2017/%C2%A9Directive_Summary_and_Call_to_action_20170411.pdf>.

³⁷ Cfr. EBLIDA, *Copyright reform: why should libraries care*, September 2017 (last update 12th October 2017), <<http://www.eblida.org/copyright-reform>>.

³⁸ \$5,5 billion according to the Outsell report of 2014, cfr. OUTSELL, *Library Market Size, Share, Performance and Trends*, Burlingame (CA), Outsell, 2014.

³⁹ Cfr. FESABID, *The economic and social value of information services: libraries: report of findings*, co-ordinated by José A. Gómez Yáñez, Madrid, Fesabid, 2014, <http://www.fesabid.org/documentos/economic_social_value_information_service_libraries.pdf>; *The economic value of public libraries*, 2015, <<http://www.fremtidensbiblioteker.dk/the-economic-value-of-public-libraries>>.

demonstrate that financing libraries is not a burden to society, but an investment for the community.

Where other studies show that 30% of students⁴⁰ in the EU were considered digitally competent in 2013, this poses the question of digital literacy. Therefore, to educate our citizens in digital literacy⁴¹ requires the recognition of the public interest mission of libraries through an updated legal framework.

In the copyright reform struggle, policy-makers are quite visibly split. However, this shouldn't prevent the sector from continuing to advocate for change. In the long term, the role played by libraries in fostering eco-

nomic, social and territorial cohesion, as well as their role in research, should be recognised as their real value. Perhaps then libraries could be considered as part of the shared competence of the EU (under article 2.4 of the Treaty).

But before this time comes, and before a library directive happens in Europe, we still have a long way to go. So, to ensure that the voice of the sector is heard, Eblida and its partners will continue to pull all our strength together on the copyright dossier and make use of it as a sounding board, to keep the library voice loud and clear.

ABSTRACT

Since 1992 and the creation of the European Bureau of Library, Information and Documentation Associations (Eblida), libraries in Europe have been struggling to ensure that the legal framework includes them, and that it doesn't bypass their missions of providing unhindered access to information and knowledge for all.

Libraries are neither an exclusive competence of the European Union, nor a shared competence with member-states. They are part of the exclusive member-states (and local government) jurisdictions. There is therefore no library law at European level, but the absence of a law does not mean an absence of rights. In European Law however, the approach to copyright has been rather restrictive, and the question of its harmonisation appears limited to the exclusive rights of the creator of an original work. On the other hand, no harmonisation has been introduced with regard to the counterpart of this right, namely the limitations and exceptions, whose sole common provision is to be compliant with the Bern convention's three-step test. Over two years ago, Eblida formed a Library and Cultural Heritage Coalition together with its partners IFLA, Liber, PL2020 and Europeana with a view to improving advocacy for a progressive directive to ensure that libraries can effectively function and best serve their users in this, the 21st digital century.

In such a context, the particular nature of the relationship between copyright and libraries is an excellent example capturing the complexity of the dossier, and a very good reason why libraries need to lobby at European level.

IL COPYRIGHT NEL DIBATTITO BIBLIOTECARIO EUROPEO

Sin dalla nascita dell'European Bureau of Library, Information and Documentation Associations (Eblida), nel 1992, le biblioteche in Europa hanno lottato per essere incluse nel quadro giuridico comunitario, al fine di salvaguardare la loro missione a favore del libero accesso all'informazione e alla conoscenza per tutti.

Le biblioteche non rientrano né nelle competenze esclusive dell'Unione europea, né in quelle concorrenti con gli stati membri. Rientrano infatti nella giurisdizione esclusiva degli stati membri (e delle amministrazioni locali): non esiste quindi una legislazione bibliotecaria a livello europeo, ma la sua assenza non può significare assenza di diritti. Nel diritto europeo, tuttavia, l'approccio al copyright è stato piuttosto restrittivo e la questione della sua armonizzazione sembra limitarsi alla sfera dei diritti esclusivi dell'autore di un'opera originale. D'altra parte, nessuna armonizzazione è stata introdotta in relazione alla controparte di questo diritto, ovvero le limitazioni e le eccezioni, sulle quali l'unica disposizione comune è quella della conformità al three-step test previsto dalla Convenzione di Berna.

Da oltre due anni Eblida, IFLA, Liber, PL2020 ed Europeana operano congiuntamente per promuovere una direttiva progressista che garantisca alle biblioteche la possibilità di servire al meglio i propri utenti nel XXI secolo digitale: un ottimo motivo per le biblioteche di fare lobby a livello europeo.

⁴⁰ Cfr. EUROPEAN COMMISSION, *Opening up Education: Innovative teaching and learning for all through new Technologies and Open Educational Resources: COM(2013) 654 final*, Brussels, 25th September 2013, <<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52013DC0654&from=EN>>.

⁴¹ Libraries (and public libraries in particular) are also often an essential point of entry into the individual pathways of non-formal and informal training throughout life, as highlighted in the conclusions of a study by Eblida.