

E-information and Copyright in Botswana: the Library Exception

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Abstract - This paper looks at the implications of copyright on library services in the digital environment under Botswana law. The Arthur argues that the trends in the law are to give the copyright holders a strong hold on their rights thus making it difficult for libraries to discharge their responsibilities to their communities. The paper advocates for specialized copyright exceptions for libraries.

Index terms - Copyright protection

Copyright has evolved over the years and continues to do so more so with the advent of technology. Copyright refers to the exclusive right that one has to authorize certain acts (any form of reproduction and performance) in relation to his or her work done.[1] The rights accrue as soon as the work is created provided it is fixed in a tangible form. Copyright law emanates from the constitutional right to access, use and disseminate information and knowledge. [2] The constitutional right to information allows one to create information while at the same time giving others the right to access and use that information. As such it can be said that copyright creates a balance between two rights namely; the right to create information and the right to access and use information. [3]

Libraries and information centers are central to the implementation of these rights in the sense that the primary role of libraries is to collect, preserve, organize and disseminate information. In the past, libraries dealt with print information so this role was fairly straight forward and copyright responsibility was not complex to discharge. However, this has become more challenging with the advent of computer and related technology. This challenge emanates from the nature in which digital information is transmitted from one point to the other. In the print environment the library is the direct link between the right holder and the user through the first sale doctrine and fair use while in

the electronic environment the library is more of a conduit.

According to Sheat a library was “Originally a repository for published works which could be borrowed or physically accessed by the public, libraries are now.....international network of libraries that has the ability to digitize works and provide users with online access to a worldwide repertoire of works.” [3] Information technology has turned the world into a global village where information can be moved from one point to the other through the click of a button. The challenge is now one of defining the role that the libraries play in respect of copyright.

Internationally, the law is changing so as to bring copyright protection in the electronic environment into perspective. For example the *Agreement on Trade-Related Aspects of Intellectual Property Rights* (TRIPS) [4] agreement deals specifically with Intellectual Property in the electronic environment and lays down basic principles that signatories to the agreement are required to comply with. Many countries are now amending their laws in line with the TRIPS agreement. However, these changes may not always work in favor of libraries and the communities that they serve.

Copyright law in Botswana was reviewed in 2000 and a new act, the *Copyright and Neighboring Rights Act of 2000* [5] was enacted. However, the Act has not commenced in implementation. Section 16 of the Act provides a copyright exception for libraries. The provision states that a non-profit library may without the authorization of the author or other owner of copyright make a single copy of the work by reprographic reproduction on request by a person for the purposes of study, scholarship or private research. Paragraph ‘b’ of the same provision provides for reproduction for archival purposes. The Act does not specify the conditions under

which such copying is to be made in respect of digital copies. This can pose a huge problem for libraries.

Questions that arise are whether this provision will cover communication/ delivery or storage of the copy by digital means, what happens when information is placed on the library server allowing patrons to download and copy for themselves, how do libraries address the issue of reproduction to serve users with disabilities, and who becomes liable in case of infringement? The Act does not provide an answer to these questions; much is left to the library to determine what is reasonable in a given situation.

In the digital environment, the copyright exceptions of "first sale doctrine" and "fair use" under which the library can lend, archive or dispose of the physical copies at will seem to be fading away. We move to a world of licensed information use where the ownership and control remains with the publisher or producer. The library does not buy the information; it enters into a contract for the right to make use of it. [6] The contractual agreement determines what the library can or can not do with the resources and often overrides the copyright exceptions provide in the law. The situation in Botswana is such that the majority of the people are consumers of information with little or no money to buy or license information for themselves, so they rely on libraries to supply the information needed. The laxity of the law allows service providers to determine what is fair use based on their desire to make economic gain.

There is a need for specific provisions on electronic reproduction that will define the copyright exceptions for libraries in the digital environment including the role that licensing agreements play in fair use. The legislation must balance the rights of copyright holders and users of information and allow for libraries to serve users needs freely. Failure for the law to make it possible for information to be disseminated to different members of society equally amounts to discrimination. Legislators should look at the different members of society and make information accessible to them equally. For example a person with a hearing disability should not be denied access to information simply because the information is produced in a format that they can not use.

Areas that need to be address by the law are: a ban on licensing agreements that attempt to override statutory exceptions, allow libraries to have more privileges to be able to transcribe materials to suit users needs (e.g. users with disabilities), electronic archiving and access of such materials, electronic distribution of e-content for distance learning, and clarity on liability for abuse of digital information. [7] Knowledge is of not much value if it can not be shared. The whole point of creating knowledge in the first place is to share it with others and libraries play a critical role in the sharing process. The original intention of copyright law was to promote research and the sharing of information and it is imperative for sustainable development that this intention continues.

REFERENCES

- [1] Copyright and Neighboring Rights Act of Botswana, Cap 68:02 (2000), Section 2(1).
- [2] Constitution of Botswana, Cap 01:01, Section 12
- [3] G. Davies, Copyright and the public interest, London: Sweet & Maxwell, 2002 observes that the function of copyright is two fold, "to accord exploitation rights to those who engage in literary and artistic production and to answer to the general public interest in the widest possible availability of copyright material."
- [3] K. Sheat, "Libraries, copyright and the global digital environment" The Electronic Library, vol. 22, no. 5, pp 487-491, October 2004
- [4] The agreement was negotiated in 1994.
- [5] See note [1] above.
- [6] K. Coyle, "Electronic information –some implications for libraries", 1996, available at: <http://www.kcoyle.net/carlart.html> , retrieved on the 9, September 2006
- [7] S. S. Rao, "Copyright: its implications for electronic information", Online Information Review, vol. 27, no. 4, pp. 264-275, 2003. Rao observes some of the concerns brought by digital information for libraries and educational institutions.