



STATEMENT BY IFLA

The International Federation of Library Associations and Institutions
(*Federation Internationale des Associations Bibliothecaires*)

Provisional Committee on Proposals Related to a WIPO Development Agenda (PCDA)
1st session, Geneva 20-24 February 2006

Mr Chairman, the International Federation of Library Associations represents the world's major libraries and library associations through 1700 member organisations in 150 countries. We support the intervention made at this meeting by eIFL: Electronic Information for Libraries, one of our member organisations.

We welcome the proposal by Chile (PCDA/1/2) that WIPO undertakes an appraisal of the public domain. In our view this must include the issue of the impact of intellectual property laws, licensing and technological protection measures on access to public domain information and works in electronic form. As Chile has stated, the public domain provides a fertile source of content on which creators can build new works but it needs to be nurtured and protected from erosion in the digital environment.

The digitisation of public domain works affects libraries' role as the world's custodians of human memory. While there are indeed major public sector digitisation projects, many public sector libraries such as national, academic and public libraries give commercial publishers access to public domain content for digitisation projects because they can not afford to digitise everything themselves. The publisher in turn uses the content to provide databases of compilations which receive their own copyright protection and which provide much more enriched content than can be provided by merely digitising the original works 'as is'. It is only right that the publisher should have rights in the compilation and have prospect of receiving a viable financial return from such investment for a specified period.

Public domain content within commercial electronic materials is subject to a licensing regime which is often non-negotiable and in most countries licences and contracts are allowed to override copyright exceptions and limitations. Moreover, if the digital content is not otherwise available in an open access repository, it risks being locked up in perpetuity by

TPMs and the DRMS that enforce the licence terms. Libraries already have experience of how TPMs in e-books, e-journals, databases and multimedia products such as film, broadcasts and sound recordings, remove users' rights to avail themselves of statutory exceptions and limitations to copyright, including the rights of visually impaired people to have accessible copies made or to deploy read-aloud software.

The world's great research libraries need to keep digital works in perpetuity and be able to transfer them to other formats and platforms in order to preserve them for the public domain, so they can make the content fully accessible and usable once all the rights have expired. A number of legal deposit libraries now have legislative mandates to collect and preserve digital materials. Yet the average life of a TPM or DRMS is around 3 to 5 years. If the product is no longer made, there will be no new TPM compatible with new operating systems and no key available to allow libraries to migrate content to new platforms. Nor does the TPM cease upon expiry of copyright, so the content will remain locked even when no rights subsist. By then the ownership of the rights may be impossible to trace, rendering the product orphaned and without a key. Obsolescent TPMs render digital content inaccessible to future generations of researchers. For libraries, charged with creating and maintaining a patrimony of public domain works in the digital environment, this is serious.

A low cost solution to these problems is that publishers who digitise public domain works also be required to furnish the library which provided the material, with clean digital copies so that the library may not only preserve the digitised works for posterity and migrate them to new platforms, but also make those public domain works freely available forthwith on an 'as is' basis to the public on library servers. This would immensely benefit access to public domain works by developing countries, especially if WIPO created a database or portal to these works as Chile proposes. Publishers should also be required to entrust major legal deposit and research libraries stipulated by national legislation with clean copies of their electronic products for the purposes of conservation and preservation so that the content is not lost when the rights in the product expire. It would be helpful if the proposed appraisal were to address these points.

The library community believes that it is proper for WIPO to assume guardianship of the public domain, promoting its value and protecting it from encroachment. Chile's suggestion that WIPO establishes a permanent unit which would work on public domain issues would be

of great benefit to Member States and the IP community. IP is not just about generating economic benefit for nations and enterprise, an area of activity that WIPO already advises on, but is also about growing knowledge, innovation and creativity, and delivering education - the bedrock of economic prosperity.

We support Chile's proposal for a without-prejudice impact study to assess the appropriate levels of IP with regard to individual countries and we endorse the suggested criteria. We would expect the study to reveal the hidden costs met by libraries resulting from copyright protection – such as the fees they pay for licensing and document supply, book and journal prices, reprographics and levies and the expensive and frustrating process of copyright clearance – especially when tracing the vanished rightowners of orphan works. This study risks being flawed unless library associations and institutions in those countries are specifically invited by their governments to play a full part. We urge WIPO to request Member States to do this. IFLA would be pleased to assist in this regard.

Finally, we urge the present meeting to adopt the practical proposals made by the Group of Friends of Development (PCDA/1/5). They seem to present an eminently sensible way forward.

Thank you Mr Chairman

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