


IGF 2020
Dynamic Coalition on Public Access in Libraries (DC-PAL)


Access to knowledge in a pandemic: a public health issue?
 Review of library, publishers & government responses, options available under global IP rules

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Online
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Access to knowledge
 Education, research, leisure, culture,
 employment, health information,
 citizen engagement



In a pandemic...
 visiting a physical library,
 working in a library,
 handling library books,
 accessing books in quarantine
 (under pressure to lend high demand titles)
...is a public health issue



Photo by Richard W. Dionne Jr.

Once items are returned they are quarantined for 5 days and checked back in on the 6th day

*WE DO NOT CHARGE LATE FEES




“How copyright exceptions facilitate social distancing”

Jonathan Band
 Disruptive Competition Project
 March 2020




Library issues that have emerged

Lending print books during lockdown
 (controlled digital lending)
 E-textbooks: no purchasing options for libraries
 E-book pricing models
 Copyright and online education
 Usage terms in licences for e-resources
 Research tools in a pandemic: TDM




Library responses (examples of different approaches)

- **ICOLC** statement asked publishers for temporary relief e.g. waive limits on simultaneous users, lift restrictions on ILL or photocopying, allow use of all copyright exceptions even if restricted in the licence (March 2020)
- **LIBER**, Association of Research Libraries, called on EC & EU member states for public interest defence for research & libraries in times of crisis, such as COVID-19 (April 2020)
- **COMMUNIA** argued that basic rights enshrined in EU Charter of Fundamental Rights, such as right to science and education, should be applied as a break on exclusive copyrights in exceptional situations (May 2020)
- **U.S. library copyright specialists** reaffirmed the role of fair use in supporting remote teaching and research (March 2020)




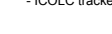
Civil society responses

- **Open letter calling on WIPO** to take a stand so that IP systems are a support in fighting the pandemic, encouraging use of flexibilities that permit use of works for online education, research, access to medicine and culture
Endorsed by 500+ organizations in 45 countries (April 2020)
- **Open COVID Pledge** calls on companies, universities, etc. to make their patents and copyrights temporarily, freely available to accelerate the development of diagnostics, vaccines, treatments for COVID-19. Led by Creative Commons (June 2020)
- **Open Covid Pledge for Research in Education** calls on education and research communities to make their outputs openly available to assist in understanding and responding to the crisis Led by Association for Learning Technology (August 2020)



Publisher responses

- **Home-schooling:** free access to digital learning materials
- **Reading aloud:** permissions (where not already allowed)
- **Research:** streamed access to certain library books
- **Working from home:** reminder that copyright law still applies & licences are needed
- **HE:** reduced digital licensing fees, COVID or all content made available, restrictions on concurrent or remote access lifted
 - Expiry varies by publisher and territory, end of semester, certain date or end of emergency
 - ICOLC tracker (112 publishers): 50% concessions have expired, most "to be determined"

Government responses


- **15+ major countries** letter to scholarly publishing community asking for COVID-19 publications + data to be immediately accessible to support public health incl. Australia, Canada, Germany, India, Japan, Singapore, UK, US, EU Commission (March 2020)
- **UNESCO** mobilized representatives in 122 countries to promote open science and cooperation by sharing and making research results universally available (March 2020)
- **WHO Resolution A73.1:** removal of obstacles to universal, equitable access to affordable health technologies & products, consistent with WTO TRIPS (May 2020)
- **WHO COVID-19 Technology Access Pool (C-TAP):** to share knowledge, IP and data to advance science and technologies for COVID (May 2020) *No commitments by pharma*
- **WIPO COVID-19 IP Policy Tracker:** legislative and regulatory measures, voluntary actions (May 2020)



Binding government measures - copyright

- **Hungary:** new decree easing copyright rules for online use of works for education in an emergency, fast implementation of Art 5 DSM directive (April 2020)
- **Japan:** brought forward provision for use of material in online classes by one year, govt to pay copyright fees for academic year (April 2020)
- **Australia:** moving ahead with amendments to education and library & archives exceptions e.g. digitization & online browsing, document delivery, parity of classroom & online use. Draft legislation expected late 2020 (August 2020)

"The need for change has been further highlighted during COVID-19, with schools, universities, cultural institutions and governments moving more services online."




Binding government measures - patents

Vaccines, diagnostics and other technologies for COVID-19


Resolutions, government use authorizations, compulsory licenses

- Canada
- Chile
- Colombia
- France
- Germany
- Hungary
- Israel



Source: WIPO COVID-19 IP Policy Tracker

Source: paho.org



"Lofty rhetoric on global public goods and solidarity in the COVID-19 response has not been matched by concrete action on the sharing of know-how and intellectual property rights to facilitate deep technology transfer."

KEI statement WHO Executive Board special session: Update on implementation of resolution WHA73.1 (2020) on the COVID-19 response, 5 October 2020



WTO TRIPS Council – October 2020

- India-South Africa joint proposal, co-sponsored by Eswatini and Kenya (IP/C/W/669)
- Waiver from certain TRIPS provisions for the prevention, containment & treatment of COVID-19
- Copyright & related rights, patents, industrial designs, trade secrets
- Until widespread vaccination is in place globally, and majority of world's population has developed immunity
- TRIPS Council reconvenes before 31.12.2020 → Ministerial Conference for a decision

"Nine months into the pandemic voluntary approaches have proven to be insufficient. In a global pandemic where every country is affected, we need a global solution". –
South Africa TRIPS Council, 16 October 2020



Options available under global IP rules


WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)

Article 73 Security Exceptions
Nothing in this Agreement shall be construed: ... (b) to prevent a Member from taking any action which it considers necessary for the protection of its essential security interests: ... (iii) taken in time of war or other emergency in international relations; or

Examples:

- waiver from the implementation, application and enforcement of copyrights
- indemnity against infringement claims
- measures dealing with competition (e.g. to alleviate e-book pricing)


(LDCs can already avail of transitional waivers under Art 66.1 until July 2021, extension requested)



Unprecedented government interventions in other areas

- Real property - no rent increases, moratorium on evictions
- Competition law – collective discussion of supply chains by supermarkets
- Civil rights – travel restrictions, business closures

Time to safeguard essential library services?



Thank you

Questions or comments?

