

המרכז למשפט וטכנולוגיה, הפקולטה למשפטים אוניברסיטת
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מדע נגיש: מדיניות מדע ו-Open Access בישראל

ד"ר אורית פישמן אפורי,
בית ספר למשפטים, המסלול האקדמי המכללה למנהל
forit@colman.ac.il

Introduction

- **Public libraries, providing access to electronic resources, are of great importance: promotion of progress; access to knowledge; democracy.**
- **The problem of restrictive contracts.**
- **Time has come to control restrictive copyright contracts which undermines permitted uses in the context of e-libraries.**

E-Library - An Information Intermediary

- **Libraries function as an intermediary for the dissemination of information and knowledge**
- **Approval of the operation of search engines - the online intermediary
(Perfect 10 v. Google; Field v. Google)**
- **Approval of the operation of Google's Book Project – the online universal library
(The Authors Guild v. Google)**

E-Library - An Information Intermediary

The justifications for **allowing** the operation of search engines and Google's Book project

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The justifications for **preventing** the practice of restrictive copyright contracts being forced upon e-libraries

Restrictive Copyright Contracts

- Copyright Law Review Committee report on "Copyright and Contracts", Australia 2002:

http://www.ag.gov.au/www/agd/agd.nsf/Page/Copyright_CopyrightLawReviewCommittee_CLRCReports_CopyrightandContract_CopyrightandContract

"A very substantial number of license agreements contain terms or conditions which purport to override or modify copyright exceptions."

Restrictive Copyright Contracts

These include:

- **restrictions on users printing or downloading or emailing copies of (parts of) the resource**
 - **overriding s. 40 (fair dealing for research or study);**
- **restrictions on libraries performing Inter-Library Loan/ Document Supply**
 - **overriding ss. 49 and 50 (reproducing and communicating works by libraries and archives for users);**
- **etc. etc. etc.**

Examples of Restrictive Clauses

- A license for an online encyclopedia which provides that:

“[this service] is protected by copyright laws,...., and excepting a single copy for personal use, no extract may be copied, reproduced or distributed... “

Examples of Restrictive Clauses

- A clause from an agreement with a US information provider:

“The Databases are copyrighted Customer shall not duplicate, distribute, sell, commercially exploit, create derivate works from, or otherwise make available the Databases or **information contained therein, in any form or medium (electronic, paper, photographic film or otherwise), to any third party.”**

Restrictive Copyright Contracts

■ The British Library Report, 2010

<http://pressandpolicy.bl.uk/imagelibrary/downloadMedia.ashx?MediaDetailsID=691>

"British Library contracts revealed that 90% undermine the public interest exceptions in copyright law agreed by Parliament to foster education, learning and creativity".

Possible Solutions for Restrictive Contracts

- **Interference with restrictive contracts:**
 - **Uniform Contract Law/ Consumer Law**
 - **Copyright Law:**
a special clause protecting libraries from restrictive contracts

Mandatory Exceptions

- **There is no legal obstacle to the legislation of a clause forbidding restrictive copyright contracts:**
 - **Ireland, Belgium and Portugal** – have already codified a rule preventing the practice of restrictive contracts
 - **Two European Directives** (the Database and Computer-Software Directives) includes clauses forbidding specific restriction in contracts
 - **Marrakesh Treaty to Facilitate Access to Published Works for Persons who are Blind, Visually Impaired, or otherwise Print Disabled** (June, 2013)

Mandatory Exceptions

- **The question is:**

How to promote specific legislation concerning mandatory exceptions for libraries?

The IP International Law Vehicle

WIPO?

The Public Libraries Treaty??

The Human Rights Vehicle

- **Human Rights and Intellectual Property Law**
- **The public library plays an essential role in promoting human rights goals**
- **The solution: an international norm, according to which libraries' exception should be mandatory**

Conclusion

Open Access?

**Stop neglecting restrictive
copyright contracts!**