

# Preface

## INTRODUCTION

Every day more digital devices and procedures replace traditional ones, and digital repositories and digital libraries have replaced traditional collections of information. People can search for and access articles, photos, videos, opinions, advice, and many more objects of interest, from digital repositories and libraries.

More than 93% of the content that is produced today is digital, without even counting the content that is undergoing digitization. And this is not limited to text documents, such as articles and encyclopedias, but includes most photos, videos, music recording, and even content for which there is no traditional equivalent, such as interactive or multimedia applications.

Digital libraries aim to collect, manage and preserve electronic expressions of knowledge on any subject, type or format. Although much of that information is also found in the Web, digital libraries have some additional properties, that makes them even more useful: the information is more structured, persistent, provides more searching options and a procedure for quality control and acquisition, making it more trustworthy and valid. The general trend is to make the next generation of the web more like a digital library.

Digital libraries provide content and services on this content, and possibly on similar content found on other, remote, repositories. The completeness of the content is important to the value of the digital library, and advanced services on it can augment its value even further. The adoption of open standards is also needed for real successful distributed digital libraries.

Many of today's activities benefit from digital libraries and the web, ranging from searching for existing information to online research and training. Common motives for creating digital libraries could be the adoption of technology, the attraction of new funding and wider visibility of the information to users all around the world. They help to reduce the differences among libraries, classes, laboratories, research and teaching, providing equal opportunities to all users, even remote ones.

The significance of the digital libraries is recognized and many national and international projects and initiatives exist, that try to aggregate as much content as possible under a one-stop-search interface. Europeana is an example of one of the most recent big such efforts.

The creation and the operation of the digital libraries are not without problems, of many kinds, such as philosophical, social, technical and legal.

## THE LEGAL CHALLENGES IN DIGITAL LIBRARIES

A digital library is more than the digital version of the traditional library. It is a new kind of an organization that makes use of Internet technology in order to provide access of the public to a wide range of information services (Atkins, 1998). While a traditional library consists of books and other print material, a digital library is not its equivalent. That being said, it must be borne in mind that a digital library is more than a collection of digitized books and collections, but consists of various electronic resources and associated technical capabilities that enable the creation, search and use of information (Borgman et al., 1996).

The special features of digital libraries differentiate the legal regime of digital libraries from the legal status of traditional libraries. While in traditional libraries the majority of legal issues concern traditional in-library uses of the library's contents, such the application of the public lending right, the creation of analogue copies of rare materials and the photocopying of books and other documents, in digital libraries the legal problematic is centred on the digitalization of contents and on the distance access to on-line library services. The multifunctional character of the digital libraries and the diversity of their contents raise a bundle of legal issues related to the creation of the library and its dissemination to the public.

Digital libraries are informational collections which are based on the collection and the elaboration of various pre-existing contents, such as data, works of mind and other elements. Consequently, the creation of a digital library presupposes the respect of the legal norms which govern the pre-existing materials which are included to the database. Thus, the legal treatment of the digital libraries comprises unavoidably the combined application of various legal branches, such as copyright law, personal data protection, privacy law, libel law, tort law or private international law. Moreover, the digital library constitutes an informational entity which presents high cultural and economic value. The research of the appropriate legal regime for the protection of the library against free-riders and in general against unauthorised uses is a delicate task which has undoubtedly an international dimension.

Digital libraries are viewed as databases, due to the fact that they present a database structure (Borgman, 1999). Insofar, it is appropriate to consider their protection in accordance with the legal regime for databases. The issue that should be addressed is whether digital collections fall within the definition of a database under EU Directive 96/9/EC and thus, the structure of digital libraries should be scrutinized. The fact that under EU law databases are afforded a two tier protection makes necessary to study the requirements and limitations of the database rights. Particular regard should be made to the situation in USA, where there is no specific regime for the protection of databases (Synodinou, 2010).

Research in digital libraries has grown rapidly in the recent years, as digital libraries are considered extremely important for the dissemination of knowledge and the preservation of cultural and scientific heritage (Korres & Kokotsaki, 2010). Moreover, the practice of digital libraries is gaining enormous importance, as more and more content is made online available by means of digital collections and big digital library projects are undertaken. A massive undertaking, for example, is the Google's Library Project, which aims at digitizing the content of several research libraries and providing an online catalogue, through which users can search (Bottis, 2007). In Europe, the goal of creating a European Digital Library was realized on 20 November 2008, when Europeana.eu went live. Several legal issues are arising on the occasion of these projects, which are not easy to tackle.

It is noteworthy that a High Level Expert Group identified certain legal issues with regard to the European Digital Library project, which deserve attention, and those are the issues of digital preservation, orphan works, out-of-print works and other implementation issues (High Level Expert Group,

2007). It is stressed out in the Interim Report that exceptions in EU Member States laws allow libraries and other institutions to make one single copy for preservation purposes, but this exception could be proved insufficient. With regard to “orphan works”, i.e. works whose rightholders are not identifiable or where they are identifiable, they are not locatable; apparently, the use of such works presents big problems, since the consent of their author cannot be obtained. This deficit is on the detriment not only of the stakeholders, but also of the public, i.e., the perspective users of such works, which are not able to ask for permission to use them (M.-D. Papadopoulou, 2010). Similar problems arise with regard to works that are out-of-print or out of commercial distribution. Although these works are still protected by copyright, it is difficult to ask for permission to digitize and make them available through the digital library (Koskinen-Olsson, 2009). The High Level Expert Group made certain recommendations regarding all these issues in its final report (High Level Expert Group, 2009), but it remains to be seen whether it is feasible to tackle such tricky issues.

A more thorny issue arise with regard to Google’s project, which provoked a great fierce controversy. Google’s attempt to digitize books under copyright without the permission of authors or rightholders is considered a violation of copyright law, while it claims that this act is covered under the fair use clause of copyright (Prasad & Agarwala, 2008). Undoubtedly, digitization of copyright works raises copyright issues, as this act may conflict with the economic and moral rights of authors (Lucas-Schloetter, 2010, A. Papadopoulou, 2010). On the other hand, there are exceptions for libraries and it is questionable whether libraries are entitled to make copies of their collections (Lucas-Schloetter, 2010).

It becomes apparent that it is crucial to stress the need to strike a fair balance between protection and access to information (Geiger, 2010). Furthermore, it is essential to realize the boundaries confronting digital libraries with regard to protection of personal data (Iglezakis, 2010), but also as far as the liability of providers in relation to an open library (Tsingos, 2010). Applicable law issues with regard to liability for copyright infringement and other offenses and jurisdictional issues are also of major importance (Hadjimichail, 2010).

In this book, a comprehensive review of the legal issues concerning digital libraries is presented by the authors of the relevant chapters. Future research will identify eventually other important topics, as reality poses always new, attention-grabbing questions that should be dealt with.

## **ORGANIZATION OF THE BOOK**

This book is organized in two bands. The first band, deals with an overview of digital libraries. A brief description of each of its 8 chapters can be found in the detailed table of contents. Chapter 1 discusses the history, evolution and impact of digital libraries on various aspects of our society. Chapter 2 examines the principles and practices of interoperability – the ability of systems to work together – which is essential to digital libraries. Chapter 3 deals with defining and assessing the quality of a digital library. Chapter 4 addresses the collaborative aspects of digital libraries as a special case of Computer Supported Collaborative Work (CSCW). Chapter 5 examines the issue of digital formats for document encoding, archiving and publishing. Special kind of digital content are presented in Chapters 6 and 7, music libraries and how users interact with music stores and repositories and electronic books in digital libraries, respectively. Chapter 8 concludes with current and emerging challenges that are the result of using digital information.

The second band contains 16 chapters clustered in 4 sections. A brief description of each of the 16 chapters can be found in the detailed table of contents.

Section 1, titled “*Digital Libraries and Copyright Law*” is comprised of 9 chapters. This section deals with the most important issues posed by digital libraries in the modern environment of the Internet. The first two chapters refer to the digitization of contents in a digital library and analyze the economic rights as well as the moral right. In the third chapter the problem of ‘orphan’ works is discussed, which is central in the creation of digital libraries. The protection of digital libraries as databases under EU and US law is analyzed in the fifth chapter. The next chapter adopts an approach of copyright law as the result of reconciliation between diverging interests and examines the limitations and exceptions to copyright with regard to digital libraries. Subsequently, the sixth chapter presents a specific exception, i.e. the exception of quotation.

The last three chapters of this section deal with more specific issues. Chapter 14 discusses issues arising from web linking, particularly for digital libraries, while Chapter 15 addresses specific issues, such as those concerning the relation of digital libraries with ethics and peer-to-peer networks and also, certain copyright issues. Finally, the last chapter of this section examines the issue how can open access be achieved through the instrument of contracts.

Section 2 titled “*Traditional Media in Digital Libraries*” is comprised of two chapters. The first one deals with the new digital environment that embraces newspaper content and the second discusses issues concerning the inclusion of audiovisual works in digital libraries and their resulting exploitation.

Section 3 is titled “*Management of the Digital Library: IP Management and other Legal Issues*”. It provides an analysis in specific issues which do not relate to copyright, but are considerably important. Chapter 20 discusses data protection issues with regard to digital libraries, while the next chapter deals with the liability of hosting provider. Subsequently, Chapter 21 deals with jurisdiction issues.

Lastly, Section 4, which is titled “*Cultural Aspects*” is comprised of a single chapter, which deals with a very specific issue, the Preservation of Cultural and Scientific Heritage by means of Digital libraries.

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