

The copyright system, librarians and library associations defenders of copyright as main barriers of documental information access in libraries from underdeveloped countries. Ten theses

**Draft document
made for clarification of ideas**

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Question 4.4.: Are the access, cost, and availability barriers faced by school, university, and public librarians caused primarily by the Berne Convention, TRIPS, and the WIPO Copyright Treaty, as well as by domestic copyright law?

Yes, the access, cost, and availability barriers faced by school, university, and public librarians are caused primarily by the Berne Convention, TRIPS, and the WIPO Copyright Treaty, as well as by domestic copyright law.

1. The general position of the majority of librarians and library associations, both at national and international levels, seek to maintain a “fair” balance among the moral authors, publishers and society through copyright laws.
2. But there is not a fair balance through the existing international copyright laws around the world as they have been enforced since the beginning. Confronted by the wording of Article 27 of the Universal Declaration of Human Rights, such laws clash into unavoidable contradictions. On one hand this article states:

“*Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

*Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.”
3. But on the other hand, all the laws around the world consider as copyright holders not only the moral authors who actually produce scientific, literary or artistic works, but also any other third parties who are not the moral authors, such as publishers, companies, corporations, institutions, etc.
4. Furthermore, not everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancements and its benefits, in the particular case through libraries. This is so because due to the existing copyright laws around the world, only those libraries which can afford to pay copyright royalties to third parties others than the moral authors, can actually disseminate the cultural works through information and knowledge materials such as books, journals, magazines, etc.
5. Thus, Berne Convention, TRIPS, the WIPO Copyright Treaty and domestic copyright laws around the world are

infringing Article 27 of the Universal Declaration of Human Rights. This means one UN based body such as WIPO is overtly infringing another UN body such as the Office of the United Nations High Commissioner for Human Rights.

6. Therefore, all those librarians and library associations seeking a balance among moral authors, publishers (and other third parties which commercially exploit the moral author's works), and society --- such as library users --- add to and are part of the barriers that copyright laws create for access to information and knowledge through libraries. By seeking to keep a fair balance within the copyright system as it is at the present, such librarians and library associations are per se seeking to maintain the inherent contradictions of such a system.
7. But what librarians and library associations should do instead is to seek methods to put an end to the contradictory character of the copyright system. They should seek to guarantee the right of the moral author to enjoy the whole benefits of their works. And above all they should seek to guarantee that society, in the case of library users, has a free, free of charge, unhampered, and socially equal access to information/knowledge through libraries. In this case, authors should agree with this mission of libraries and not charge taxes to libraries any time they lend books to users. It has been well researched, authors whose works are mainly a dissemination for their scientific advancements, they do want that their works be disseminated for the broader publics, free of charge with unhampered access, they are already paid through their academic or research institutions. For the publicly funded authors, that is precisely their mission. As for the case of those authors whose way of living is through their novels, poems, and writings, even in that case a free of charge and unhampered access to their works should be guaranteed in libraries. Since libraries are not charging them for the free of charge, massive, constant and thorough marketing they do of their works through many ways such as bibliographic

exhibitions, story telling, graphic displays by expert library curators, conservation of their books, and many others, all of them as part of their daily job.

8. For example, this is now the case with the 1992 European Commission Directive which requires all European libraries charge 1.00 Euro any time a user borrows a book. This is so because the third party copyright holders, others than the moral authors, not only do not allow reprographic services which infringe “their” copyrights, but also build higher walls as barriers to access to information and knowledge in libraries. A recently notorious example is the book of the Colombian Nobel laureate of literature, Gabriel García Márquez, *Memorias de mis putas tristes* (*Memoirs of my sad whores*). The book is published by Random House, Colombia, the publishing division of the German multinational corporation Bertelsmann. The publisher, acting as a third party copyright holder of the actual moral author, states on the title page of the book that all rights are reserved and that not a single part of the book can be reproduced by any means, But it goes much further when the publisher states that the book should not lent by any public institution, such as libraries, without the authorization of the author and without the payment of extra royalties to the copyright holder, that is, Random House. This approach by publishers echoes the attitude of publishers in England more than 200 years when circulating libraries were starting to be established in the UK. As the London bookseller James Lackington (1746-1815) wrote at the time:

When circulating libraries were first opened, the booksellers were much alarmed, and their rapid increase, added to their fears, had led them to think that the sale of books would be much diminished by such libraries. But experience has proved that the sale of books, so far from being diminished by them, has been greatly promoted, as from those repositories many thousand families have been cheaply supplied with books, by which the taste of reading has become much more general, and thousands of books are

purchased every year by such as have first borrowed them at those libraries, and after reading, approving of them, become purchasers.

(From S. H. Steinberg, "Five hundred years of printing" (Harmondsworth: Penguin, 1961).

9. Some librarians are fighting against such extra royalties that publishers, acting as copyright holders, are charging libraries in Europe. But while that fight seems plausible, at the same time and looking at the broader picture, they are not fighting to put an end to the bigger contradictions of the copyright system, such as those explained above. In fact, they do not even correlate them as barriers to the access of information and knowledge in libraries.
10. Thus librarians should join forces with other groups in society to fight to put an end to the contradictions in the copyright system, by genuinely guaranteeing the enforcement of the Article 27 of the Universal Declaration of the Human Rights, both on the general broadest levels and at the individual library levels as well.