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**Copyright and other Legal Matters (CLM) with Free Access To Information And Freedom Of Expression (FAIFE)**

**Libraries and the Internet: Public Policy Challenges**

*The interaction between democracy and Internet through libraries in Italy: is the Italian government going to establish controls on Internet Content?*

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#### **Abstract**

*This paper examines issues arising from the pervasive nature of the internet in the dissemination of knowledge in public and academic libraries in Italy. It posits the question of the adoption of Internet Policies which would define the services and products on offer and conditions of use, observing that such policies should ensure maximum access for the user while simultaneously preserving the rights of the copyright holder. It also explores the concept of 'added value', particularly in terms of open format, noting that aspects of authors' rights need to be clarified. Outlining the progress made by some international movements in Italy such as Open Access, the paper also gives an insight into the debate within the Italian community and the challenges it faces, particularly in legal terms. It looks at copyright and other legal matters, the decrees regarding piracy, use of filtering tools and the 'Levy' Proposal, which defines product publishing and editorial activities for blogs and amateur sites.*

*The paper advocates dialogue between the relevant bodies with the aim of providing a clear outline of the situation and the roles and responsibilities of all parties concerned. It states that the government's role should primarily as a balance between public interest and market competition and expresses concern about the misinterpretation of the concept of intellectual property theft and recent trends to use copyright to restrict the property rights of cultural purchases. It is apprehensive that the digital divide between Italy and other countries might increase should providers of connectivity services be required to act as a "police line".*

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In the knowledge society, the production of value and distribution models is made more effective through collective, not linear processes, where all players can access the interactive network and knowledge without discriminating clauses.

In a knowledge society and economy the critical value is the nature of social relationships. Models of production and commercial success are those that produce the enabling conditions for this to happen: from interoperability to media convergence, to the Net as a memory and repository that contains the tools to produce and the productions, thus allowing a productive ubiquity regardless of the digital media used. The free availability of the essential languages is essential for knowledge, for sharing the cognitive products, to enjoy a cultural pluralism, to be aware, informed and discretionary, as to what concerns the traceability of identity. It is also necessary to pursue a process of informed public policy, to adhere to an ecological approach as ecology of the mind. These conditions apply to both the anthropological sphere, and in the biological, and they have a balanced relationship.

The European Union set year 2010 as a deadline by which our continent must become competitive in the information society and knowledge economy through the ambitious "Lisbon Agenda" that, in 2000, simultaneously closed and opened a century and a millennium. Ann Mattler of the Lisbon Council (the organisation supported by the European Union to promote the Lisbon Agenda) at the annual IBM Forum-Rome 2006, told us that the 70% of the European economy consists in tertiary industry: try to think how much information, how much communication, how many relationships, how much knowledge, how many digital objects are contained in that percentage. There is a new way to produce value, here alienation is not a problem for a single worker or for a social class, it is a problem for the whole system.

Furthermore, the knowledge worker is also the owner of the cognitive production tools.

Libraries are tools of participatory democracy, they serve people who choose not to — or cannot afford to — purchase an extensive collection.

*"The public library, the local gateway to knowledge, is a prerequisite for lifelong learning, independence in decision-making, cultural development of the individual and social groups."* This Manifesto proclaims UNESCO's belief in the UNESCO Public Library as a living force for education, culture and information and as an agent for promoting peace and spiritual well-being in the minds of men and women. Thus, UNESCO encourages national and local governments to support public libraries and to engage actively in their development.

In the knowledge society chain, the library's action starts where the market fails. The Italian Library Association (AIB), on the occasion of the drawing up of the reply document to the public consultation of the European Commission "*Green Paper on copyright in the knowledge economy*"<sup>4</sup> focuses on the role of copyright in fostering the dissemination of knowledge for research, science and education. It proposes a definition of the knowledge economy as "*Knowledge economy is the one whose content is acquired, recorded, processed and disseminated in cultural and educational institutions and points, such as universities, schools, museums, libraries, archives, and other licensed suppliers.*"

Over the last decade the Internet has become an essential medium in public libraries because it enables the library to provide information that is held outside the boundaries of the physical collection.

Collection development, conservation, cataloguing, the organization of knowledge and its dissemination, programs supporting information literacy and e-learning activities, all aim at

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<sup>4</sup> The replies to the public consultation

[http://circa.europa.eu/Public/irc/markt/markt\\_consultations/library?l=/copyright\\_neighbouring/consultation\\_copyright&vm=detailed&sb=Title](http://circa.europa.eu/Public/irc/markt/markt_consultations/library?l=/copyright_neighbouring/consultation_copyright&vm=detailed&sb=Title)

ensuring long-lasting access to cultural heritage and freedom from social, ideological, political, religious, ethnic or linguistic prejudices or discrimination against users or documents.

However, the Internet is non-selective and is an unregulated, constantly changing environment that is worldwide in scope, and therefore informed use is advised.

For these reasons libraries need to have Internet Access Policies in order to supply their users with full access to knowledge products and appropriate services to the already existing knowledge infrastructure, and particularly those points of access where electronic products and services are consumed.

Libraries provide public computer workstations for their different user communities and the general public to use for activities related to study, research and teaching. These activities must be conducted according to fair policies in which the appropriate and forbidden activities should be listed, to ensure that the rights of all users are protected. On one hand, the libraries should reserve the right to impose time limits on the usage of equipment, to ensure reasonable availability to one and all. On the other hand, the format of a work (traditional or digital) or the location of the content (on site or on-line) should not be relevant to the correctness of the usage; the purpose and scope of that usage should be considered instead.

Any usage that is socially relevant, and does not affect in a significant way the interests of right holders, should be allowed. It is not copyright that should be protected and exceptions be established for the principle of copyright protection, but rather the other way round: the general principle should be free access to information, and exceptions to this principle should be established for content-derived products, for special uses and prescribed practices.

In the new technological environment, where forms of collective creation are possible and information explosion is an everyday reality in any discipline, content production is not the only form of added value in the knowledge economy. More added value is given by services such as content selection and research evaluation, supplied by public and university libraries. The adoption of open formats should be made mandatory for publications of public agencies (eg. in Italy there are some specific rules for public sector web sites. Nevertheless, in Italy the difficulties in accessing content in order to provide content-derived services is an entry barrier for newcomers and an obstacle for the take-off of a content-derived market. Moreover, permission for re-formatting, re-versioning is often a limitation to the free flow of knowledge. These limitations are the consequences of a very confused law on author's rights, much more inclined to protect rights holders (ownership) than free access to knowledge.

In the Italian academic environment some important international movements have found a good ground to settle down and to grow.

Firstly, the Open Access Movement (OA), landed in Italy to follow the European action named as Berlin declaration<sup>5</sup>. Secondly, the Wheeler Declaration<sup>6</sup>, focused on five criteria to define an open university, where the term university includes all parts of the community: students, faculty, administration. Thirdly, the Creative Commons deeds have been modified and integrated into the Italian rules on copyright<sup>7</sup>.

In November 2004, the CRUI (Conferenza dei Rettori delle Università Italiane) – through its library commission tasks - promoted the support of the Italian Universities to the "Berlin Declaration to Knowledge in the Sciences and Humanities", on the occasion of the Messina Conference on "Italian Universities for Open Access: towards open access for scholarly literature", in order to spread the advantages generated by open-access publishing. Thanks to Vincenzo Milanese, rector of the University of Padua, through the Messina declaration principles<sup>8</sup>, the CRUI has acknowledged the

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<sup>5</sup> <http://oa.mpg.de/openaccess-berlin/berlindeclaration.html>

<sup>6</sup> <http://www.earlham.edu/~peters/fos/2008/10/wheeler-declaration-for-open-university.html>

<sup>7</sup> <http://www.creativecommons.it/>

<sup>8</sup> Messina Declaration <http://www.aepic.it/conf/viewappendix.php?id=49&ap=1&cf=1>

importance of full and open access to information and data belonging to the public domain for scientific research and education. Therefore, it has been fostering the web dissemination of scientific knowledge produced by Italian Universities and Research Institutions.

At the beginning of 2006, within the CRUI Libraries Commission, the Italian Group for Open Access<sup>9</sup>, coordinated by Roberto Delle Donne, was established and it focused on carrying out the principles of the Berlin Declaration. This Group drew up the guidelines in order to make the academic community aware of the advantages of using Open Access, and to provide definite indications for the creation of open archives and the actualization of e-publishing initiatives.

In September 2007 the University of Padua organized the Berlin 5 international conference<sup>10</sup> with the aim of bringing together the various initiatives and key players within the Open Access movement in order to maintain the enthusiasm of all people involved in the Open Access field, have an overview of the developing tools that sustain Open Access in scientific data and cultural heritage dissemination, and develop the effective strategies that can contribute to the construction and implementation of this new paradigm of the scholarly communication world.

Because these national actions, furnished as principles and suggestions to all universities by very strong promotional activity of the OA such as conferences, workshops, publications and Italian Wiki on OA<sup>11</sup>, over forty universities opened their own institutional archives (to date almost fifty)<sup>12</sup>.

In addition, the group worked on the laws and the ways of publishing Ph.D. dissertations in the archives, on the function that open archives may have in the research assessment procedures, on the best practices for the creation of open access journals. A direct consequence of this line of work was the adoption of mandatory rules - approved by official deliberations of the Academic Senate – from several Italian universities (over twenty) which settled up policies on the deposit of Ph.D. dissertations<sup>13</sup> in the archives.

Another strategic issue in Italy is represented by the new spreading culture of research evaluation and by the role of librarians in this practice. Research assessment is based on different approaches, the outputs evaluation (as peer reviews) and new bibliometric analysis techniques, new indicators to calculate the impact of the research papers on the communities. These are the two sides of the scientometric analysis. The Italian Open Access WG, in 2009, drafted the recommendations for the usage of Open Access tools in the evaluation processes.

Another big effort revolves around the COMMUNIA Thematic Network<sup>14</sup>, coordinated by Juan Carlos de Martin of the Politecnico di Torino, which aims at becoming a European reference point for theoretical analysis and strategic policy discussion of existing and emerging issues concerning the public domain in the digital environment. COMMUNIA first took stock of existing correlated efforts for putting flesh around the five thesis of the Wheeler Declaration by the *Open University Campaign*<sup>15</sup>:

1. The research the university produces is *open access*.
2. The teaching materials are *open educational resources*.

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<sup>9</sup> <http://www.cruil.it/HomePage.aspx?ref=894>

<sup>10</sup> Berlin 5 Open Access “From Practice to Impact: Consequences of Knowledge Dissemination”. University of Padua – Italy, 19 - 21 September, 2007

<http://www.aepic.it/conf/index.php?cf=10>

<sup>11</sup> [http://wiki.openarchives.it/index.php/Pagina\\_principale](http://wiki.openarchives.it/index.php/Pagina_principale)

<sup>12</sup> OpenDOAR Directory

<http://www.opendoar.org/find.php?search=&clID=&ctID=&rtID=&cID=106&iID=&rSoftWareName=&submit=Search&format=charts&step=20&sort=r.rName&rID=&ctrl=new&p=1>

<sup>13</sup> <http://www.cruil.it/HomePage.aspx?ref=1149>

<sup>14</sup> <http://www.communia-project.eu/>

<sup>15</sup> [http://wiki.freeculture.org/Open\\_University\\_Campaign](http://wiki.freeculture.org/Open_University_Campaign)

3. The university embraces *free software and open standards*.
4. If the university holds *patents*, it readily licenses them for free software, essential medicines, and the public good.
5. The university network reflects the *open nature of the internet*.

Public libraries, copyright and internet uses are critical nodes which can drive the freedom of speech approach and the surrounding issues. What are we facing in Italy?

About copyright, the current standard is the Italian law on author's right (the term "copyright" is quite different from "author's right"), L. 22/04/1941 No 633, "*Protection of copyright and other rights related to its operations*"<sup>16</sup>, recently amended by Law 18/08/2000 No 248 "*New rules to protect the copyright*". Several countries around the world provide for exceptions or privileges, or free usages or limitations of rights, for libraries, research and education. The concept of Fair Use is a good way to respect the interests of the public and those of the authors. Fair Use allows everyone to be able to benefit from existing information, under certain conditions. We do not have Fair Use in Italy, but only exceptions or, worst, limitations of rights. Following L. 248/2000 exceptions have been compromised and confined in the realm of the limitations of rights, in negotiating agreements that provide for flat rates for the reproduction of works.

In the summer of 2008 the WG on copyright of the CRUI Libraries Commission worked also – in connection with AIB – in response to the call to European "*Green Paper on copyright in the knowledge economy*"<sup>17</sup> with a specific document focused on research and education and on the creation of digital libraries, as well as related topics, including, but not limited to, alternative forms of licensing for creative material; open access to scientific publications and research results; management of works whose authors are unknown (i.e. orphan works)<sup>18</sup>.

In Italy, usually, the University libraries reflect the open nature of the Internet. However, recently, there has been a lively discussion about these applications which are freely usable on the Internet, but could be forbidden or technically blocked within Libraries other than University networks: Public Libraries, or Libraries in other sectors. We are referring to some mail clients (POP/IMAP) or VOIP based applications (Skype, Ekiga,...) or to free Internet applications as social networks platforms, which could be controlled or restrained by the Admin network. Besides, the debate is also focused on log files tracking user traffic data logged, or else, on how long these logs must be kept in storage.

In Italy we have some actions concretized through two decrees, the first one against piracy (Decree "Urbani"<sup>19</sup>) and the second one (Decree "Gentiloni"<sup>20</sup>) about Internet control by filtering tools.

Decree "Urbani" by Giuliano Urbani (Minister for Cultural Heritage in the Berlusconi 2nd government) "*Urgent action needed in the field of cultural goods and activities*". As decree laws converted by Law 128/2004, the words shall be extended to 31/12/2009; the law introduces the sanctions against the music and film piracy committed by electronic means, through web sites or file sharing systems. The Urbani Decree introduced the crime for sharing on the Net works protected by copyright. For those involved in this type of crime, a fine remains in force instead of jail .

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<sup>16</sup> [http://www.giustizia.it/cassazione/leggi/l633\\_41.html](http://www.giustizia.it/cassazione/leggi/l633_41.html)

<sup>17</sup> [http://ec.europa.eu/internal\\_market/copyright/copyright-info/copyright-info\\_en.htm](http://ec.europa.eu/internal_market/copyright/copyright-info/copyright-info_en.htm)

<sup>18</sup> [http://wiki.openarchives.it/images/d/d6/Green\\_Paper\\_on\\_copyright\\_Call\\_for\\_comments\\_CRUIOAWORKINGGROUP.pdf](http://wiki.openarchives.it/images/d/d6/Green_Paper_on_copyright_Call_for_comments_CRUIOAWORKINGGROUP.pdf)

<sup>19</sup> [http://www.interlex.it/testi/l04\\_128.htm](http://www.interlex.it/testi/l04_128.htm)

<sup>20</sup> <http://poliziadistato.it/pds/file/files/decreto%20Gentiloni.pdf>

The decree of law "Gentiloni" by Paolo Gentiloni (Minister of Communications in the U.S. 2nd) concerning technical requirements of filtering tools that the providers of Internet connectivity to the network must use in order to prevent access to sites identified by the National Center for the contrast of child pornography. A formal ministerial decree implementing the Law 38/2006, it defines the rules for the dimming of the websites reported by the National Center against child pornography, by requiring the cooperation of the provider. This can be achieved in two ways: at the level of the DNS Domain Name Server (currently the most widely used, but also the easiest to circumvent), and at the level of the IP address (too indiscriminate).

Furthermore, there is a Proposal of law C 1269 "Levi" by Ricardo Franco Levi (Pd – Democratic Political party), launched by the 2<sup>nd</sup> Prodi government in 2007, and resubmitted to the House in the sixteenth legislature and to the Commission for Culture<sup>21</sup>. In short, in an attempt to reorganize the entire industry and to consider discipline inside the online activities, the text provides equivocal definitions of product publishing and editorial activities that could imply that blogs and amateur sites should also be certified. According to Article 2 of the proposal of Law, in fact, an editorial product is "*characterized by objective product information, training, dissemination, entertainment, whether for publication, whatever the form in which it is made and the means by which it is disseminated.*"

Another task within the Italian scenario is the issue "Share the Knowledge"<sup>22</sup>, an annual International meeting with the participation of representatives of politicians, entrepreneurs, academics and society,...in which science, cultures and practices of the biological sphere are compared with those of the anthropological sphere through their different expressive languages in the interconnected/interactive digital age. The assumption shared by the participants – librarians, too - recognized the sharing as a condition of contamination and then for new combinations in the production of cognitive value, an approach supported by UNESCO and UN WSIS resolutions, and by the Lisbon Agenda of EU on Knowledge Society. Share the Knowledge for 2009 is focused on knowledge as a common, be capable of future from Darwin to the Lisbon Agenda: understanding the change.

The results and the proposals of these conferences are transmitted to the different institutional levels in order to meet the ambitious claims of the Lisbon Agenda, which sets the widespread knowledge of the Internet as its first priority for bridging the economic backwardness of Europe.

In light of international developments, such as the Declaration of Principles World Summit on the Information Society signed by our country, an appropriate organic and general discussion among all relevant ministries and associations of the private sector and civil society would be useful, to develop the definition of a framework of clear and stable reference for the governance of the Internet at large through a public and transparent process. In particular, we consider it essential that Italy a mutual recognition of the precise roles of institutions, industry and users reaches Italy. In this context, the government should intervene as little as possible, only to ensure a balance between the public interest and market competition, rather than act to defend the interests of specific areas of the private sector and against the demands of consumers. The statement by the Minister that "*the violation of intellectual property is theft*" is conceptually incorrect. The term "theft" means the removal of property from its rightful owner; on the contrary, the construction of a new copy of a digital content does not prevent the enjoyment of others. On the contrary, the recent trend seems to be using copyright to restrict the property rights of purchasers of cultural products, by including the techniques of "protection" that actually limits the possibility of using free content, regularly paid, by

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<sup>21</sup> LEVI: "Nuova disciplina del settore dell'editoria e delega al Governo per l'emanazione di un testo unico delle disposizioni legislative in materia di editoria" (1269)

<http://www.camera.it/dati/leg16/lavori/stampati/pdf/16PDL0014370.pdf>

<sup>22</sup> <http://www.condividilaconoscenza.org/>

preventing the regular use of the product purchased on most PCs, on many car radios and other electronic systems, and reducing the sound quality on many others. We observe with astonishment the particular idea of the legislature to confer providers of connectivity services the role of "police line", helping to increase the digital divide between Italy and the most advanced countries like the United States, Sweden and South Korea.

The proposal for an Internet Bill of Rights as an open and participative process, able to define itself on multiple levels, such as institutional and self-regulation, through codes of social subsidiarity, able to define itself in ways related to asynchronous awareness differentiated on the worldwide level. This proposal exists in a full logical relationship with the Kyoto Protocol.

In the knowledge society, the production of value and distribution models are made more effective through collective processes, not linear, with all players enabled to access the interactive network, and to access the interactive network and knowledge without discriminatory conditions.

The Nature of Knowledge - which calls for a reflection on the inescapable epistemological background necessary to form a culture of complexity, so that there are no dangerous simplifications of complex processes in which the relationship between the historical and the biological time - is, at the same time, local and global. The Public Libraries are potentially permanent connections to the time of biological space, so that the interactive network is an extension of the social relationship, introductory and not alternate to the physical relationship; a viral one, not a virtual one. Rights as a common good and common goods as a right. Library as a common good, library as a right.