

Evaluating Directive 2001/29/EC from a Public Domain perspective

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Defining the public domain...

- Everything that does NOT meet the criteria for protection:
 - Idea/expression dichotomy;
 - Originality;
- Everything that NO longer meets the criteria for protection;
 - Duration has expired;
 - Exhaustion doctrine;
- ‘Free space’: limitations on copyright!

Question

- How does Directive 2001/29/EC affect the use of copyright protected works?
- Do the provisions of the Directive allow the objectives of Recommendation 2006/585/EC on the digitisation and online accessibility of cultural material and digital preservation to be met?

Limitations on copyright

- General Framework:
 - Exhaustive list of optional limitations;
 - Vague formulation of limitations \Leftrightarrow ‘homing tendency’;
 - Mandatory character of limitations unclear;
- Specific limitations for libraries, archives and museums:
 - Article 5(2)c) – reproductions by public libraries
 - Article 5(3)n) – display on dedicated terminals for purposes of research or study.

Technological Protection Measures

- General framework:
 - Prohibition on acts of circumvention and sale or advertising of circumventing devices;
 - Problematic intersection between TPM's and exercise of limitations: article 6(4) Directive.
- Specific issues for libraries, archives and museums:
 - Negotiation of agreements as means to obtain access and use;
 - Limitations on copyright often set aside by contract;

Conclusion

- General framework established by Directive 2001/29/EC puts straight-jacked on libraries, archives and museums:
 - Total lack of harmonisation leads to immense legal uncertainty;
 - Variable possibility at national level for libraries to do the necessary reproductions for purposes of preservation etc.;
 - Chaos at pan-European level;
- Directive 2001/29/EC makes the achievement of goals in Recommendation 2006/585/EC very difficult.