Digitisation has transformed our world. Information is made available over the Internet and we carry the world in our pockets. On the other hand, the greater part of access to libraries is limited in terms of time and space. It is clear that digital access to knowledge is possible, so why do national libraries have such a sparse Internet presence? A library that wants to digitise the collection and make it publicly available over the Internet must clear any copyright-protected works. Clearing one work at a time is not only impractical, it's impossible. The problem facing the libraries is that it is not possible to identify all rights holders and obtain their approval for the digitisation and public availability. In Sweden stakeholders came to an agreement more than 50 years ago – The Swedish Model, i.e. Extended Collective Licensing (ECL). Abroad copyright in this field stagnated and the stakeholders saw themselves entrenched in positions. Sweden opted for the middle way, as did the rest of Scandinavia, and solved for more than 50 years the copyright conundrum by introducing Copyright Democratic in Design. The Swedish model has appealed to EU, which has now introduced ECL in a Proposal for a Directive on copyright in the Digital Single Market. This alone provides evidence that the Swedish Model is still more than 50 years since valid in the 21st century.

Introduction

Digitisation has transformed our world. Information is made available over the Internet and we carry the world in our pockets. Digital access to knowledge by means of the Internet is possible in a wide range of forms and from numerous electronic resources, including Wikipedia, blogs, newspapers, radio, television, and more. This development is remarkable, to say the least.

The growth of information on the Internet and unlimited access to it creates new opportunities. Generations of adults, children, and young people are now accustomed to gaining access to information and knowledge at any time with just the click of a button. On the other hand, the greater part of access to libraries is limited in terms of time and space – in the case of the National Library of Sweden (NLS), to our premises in Humlegården in Stockholm during opening hours.

The commercial force behind this development is that of global, technology-oriented, US companies. Google and others have developed global business models, which further the development of various services. Unlike Google, the national libraries are limited to the country within which they operate. For the public at large, the possibilities offered by Google are sufficient much of the time, but any claim that Google gives access to the world's body of knowledge would be misleading.

This trend presents a great challenge to the national libraries. Is there any possibility whatsoever for the national libraries to perform the function which they have had for centuries? It is clear that digital access to knowledge is possible, so why do national libraries have such a sparse Internet presence? There are a number of reasons, but the primary reasons are restrictions imposed in terms of copyright and privacy rights, as well as a lack of financing.

During the foreseeable future, there will be no financing which enables mass digitisation of complete collections on the Google model. Instead, NLS intends to focus on a user-controlled model for research and education. This type of model is cost effective and focuses on user benefit.

The infinite web and the national library

The exact quantity of digital information is unknown. On the other hand, the collection in an analogue library is built on publications such as books, which are delivered to NLS pursuant to legislation governing legal deposits. In this way, one can gain an understanding of the available quantity of information. The legislation has not been without problems, but as compared with the digital world, which we have entered, the difference is striking.

This means that researchers, students, journalists, and other interested parties in society face a challenge in respect of their relationship to sources and criticism of sources. Sometimes a person can be satisfied using Google for research, which can lead to the risk of libraries becoming marginalised. How is the library to liberate itself from its inherent temporal and spatial restrictions, and thus be able to "compete" with Google and other similar parties?

Public libraries, which primarily make current collections of books and other materials available, are not bound in time and space, provided the books have been published in electronic form. Publishers can consent to the library "lending" e-books to a certain extent. Universities and university colleges have a long history of acquiring licences from publishers and companies, which provide databases. The physical collections do not become larger; to the contrary, they shrink.

However, this creates a large blind spot. The parties, which make information and databases available, have no obligation to preserve digitally published material. When the information is taken out of commerce, it creates a hole. This is where the national library comes into the picture.

To the extent possible, the national library expands its collection with material, which is published and distributed in analogue and digital form. Since other libraries will be increasingly advised to purchase subscriptions in order to provide researchers and students with access to information, NLS is increasingly becoming the only library in the traditional sense – a library with a physical collection of analogue and digital media. This development will be amplified as books, newspapers, television pro-grammes, and more become available only in digital form. As a result, they will only be stored and, in many cases, exclusively available, at the national library.

Since the national libraries generally fall within the purview of the country's government, their mandate is limited to material, which is in the national interest. However, the mandate has always made clear that the collection cannot be limited to domestic material only. Acquisitions of foreign material are a recurring theme through history, and today NLS actively acquires foreign literature. However, the national library's ability to purchase (for example) foreign literature can never meet the needs of (for example) researchers. Is there any solution to this problem?

Several years ago, NLS joined the *eBooks on Demand* consortium. This comprises 37 research and national libraries in Europe, which have created a business model for digital public availability of those books, which are not protected by copyright. Anyone in the world can order a digital copy. The principle is one of digitisation upon the request of the person who is interested in reading the book.

Two years ago, NLS initiated a discussion within the consortium about how the service could be expanded to include copyright-protected books as well. To this end, a memorandum of understanding was reached through which NLS began work to see how such a vision could be realised.

Copyright

A library that wants to digitise the collection and make it publicly available over the Internet must clear any copyright-protected works. Clearing one work at a time is not only impractical, it's impossible. Hence, when a library wants to digitise large quantities of material and make it publicly available on the Internet, the library needs a collective licence. Historically, licences have only covered works of members of a collective rights management organisation, which has precluded works authored by rights holders who do not belong to such organisations as well as orphan works.

In this context, it is important to go back several years to look at a major dispute in the United States between Google on the one hand, and publishers and authors on the other. Google had commenced comprehensive digitisation of books at US unversities without the approval of the rights holders. The (US) Authors Guild and the Association of American Publishers

sued Google for damages, but the parties ultimately drafted a proposed settlement with inspiration from an unexpected source – Sweden.

The problem facing the parties was that it was not possible to identify all rights holders and obtain their approval for the digitisation and public availability. In Sweden, however, this problem was solved 50 years ago by introducing *collective licences with an extended effect*. For the sake of simplicity I will refer to these as extended collective licences (ECLs).

The Swedish law professor Svante Bergström, who was an expert on copyright law as well as labour law, is the person attributed to have "invented" ECL as an instrument for mass usage of copyright protected works. At the late 1950-ties the Swedish broadcaster wanted a compulsory licence for their primary broadcasts. But the authors objected. Finally the two stakeholders came to an agreement how to solve the problem – not exceptions nor exclusive rights but a middle way – ECL or The Swedish Model.

Abroad copyright in this field stagnated and the right holders on the one hand and users on the other, saw themselves entrenched positions. But Sweden opted for the middle way, as did the rest of Scandinavia, and solved for more than 50 years the copyright conundrum.

The Swedish model appealed to Google, which, together with the Authors Guild and the Association of American Publishers, presented a proposed settlement. However, the judge rejected the proposed settlement; one reason for the rejection was that it was contingent upon amendment of the US Copyright Act.

At the same time, a long-term discussion began in the EU regarding the problem of orphan works. One should ask why the EU and other countries have focused on orphan works for so many years instead of resolving the issue of mass use of the libraries' collections. How did it come to pass that the EU Commission spent years on a process which focused on orphan works and which resulted in EU legislation (the Directive on certain permitted uses of orphan works) which did not enable the goal, mass use? The answer is that a mistake was made in defining the problem as "orphan works". The focus on orphan works has diverted attention and a very significant and more important issue – the great number of rights, which must be cleared – has been forgotten. The question, which instead should be answered, is how to clear rights, orphan or otherwise, in conjunction with mass use. The failure of the EU Orphan Works Directive [directive 2012/28/EU] to resolve the issue of mass use underscores the importance of effective systems for collective rights clearance. This is absolutely crucial to reach the goal of digital libraries.

At the beginning of 2010, the EU Commission realised that the directive, which was intended to be a solution to the problem of copyright and mass use, didn't solve the problem. Accordingly, the EU Commission initiated a dialogue between the libraries in the EU and the rights holders. The dialogue addressed how books and research journals, which were no longer available in commerce, could be digitised and made available to the public. The dialogue led to a memorandum of understanding, which was signed in Brussels on 20 September 2011.[1] The purpose was to promote the implementation of legislation regarding ECLs in the EU Member States and for the memorandum of understanding to be viewed as a model for additional discussions which would facilitate agreements for the digitisation of as many out-of-commerce works as possible. One could, in fact, already do this in the EU since EU copyright legislation provided legal support. However, from a political perspective, an EU Commission policy decision was necessary for countries such as Germany and France to commence a review of their legislation.

Does this mean that what Google did was completely unimportant? Absolutely not. It opened the door to political processes, which now, almost 10 years later, have resulted in work in the United States to amend legislation and implement ECLs and, in the EU, the memorandum of understanding which I mentioned in the preceding paragraph and which has resulted in amended legislation in Member States, has now been introduced in a Proposal for a Directive of the European Parliament and of the Council on copyright in the Digital Single Market – COM(2016)593. The fact that the EU COM has opted for ECL in the draft EU directive provides evidence that the Swedish Model (ECL) is still valid in the 21st century.

A global digital library?

The pilot projects NLS has launched will entail that NLS digitises and provides material to the extent requested by researchers. This is one step in NLS's endeavour to replace the interlibrary loan procedure with a system, which provides public access over the Internet using streaming methods. Such access requires copyright authorisation pursuant to a specific procedure – ECLs. The natural next step is then to test the legal principles from a cross-border perspective, which, in time, will become a global perspective. For this purpose NLS has in February 2016 entered into an ECL agreement with the Finnish CMO Kopiosto and the Swedish one, Copyswede. The ECL grants researcher's at Åbo Akademi remote access to the NLS' collections.

Accordingly, the goal is cross border access for research and enabling digital public availability to an extent, which is not currently possible. This appears to be particularly desirable in view of how global business models dominate the Internet and how the English language, if not predominant, nevertheless dominates the Internet.

In other words, the idea of a digital library is alive and well. Since the legal principles on which ECLs are based are making inroads in the EU, the US, and a number of other countries elsewhere in the world, many countries share common ground on which a global library can be built.

It is thus with some satisfaction that I can observe that it is possible to solve the copyright problem and that we can begin to discern the principles enabling a self-sustaining business model where demand controls the digitisation process. The only legal "threat" that I can see is privacy issues, but these must be addressed and cannot be disregarded since they are a matter of EU law.

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[1]   Memorandum of Understan- ding Key Principles on the Di- gitisation and Making Available of Out-of-Commerce Works, *http://ec. Europa.eu/internal_mar- ket/copyright/out-of-commerce/in- dex_en.htm*

Summary

We are seeing a possible way forward for the national libraries to digitise their collections and to make even copyright-protected material available to the public. By developing an on-demand model where digitisation takes place gradually based on demand, the costs become moderate and fall within the parameters of the existing copyright situation.

If the national libraries do what the eBooks on Demand consortium has done and join forces to share the costs of a global solution, which can manage the copyright problems and the financial burdens, the opportunity arises to make the world's knowledge publicly available. This opportunity belongs to the libraries. We can Google as much as we want, but access to the different types of artefacts contained in the libraries requires initiative on the part of the libraries. This is why NLS is taking the initiative for the pilot projects described here. They are the first of their type in the world.

In its initial phase, this is a national pilot project and then NLS will test how it works across borders in Scandinavia and then in the EU. The long-term goal is a global library.

NLS will be able to solve the copyright problems in cooperation with its foreign counterparts, but this is unquestionably contingent on working on the basis of a nationally and globally interoperable model. Interoperability is a keyword. Coordinating the political wills of different countries is not possible, but the power of setting a good example cannot be underestimated. Since the technology, which is being used in NLS's pilot project, is available and it is possible to achieve results at a relatively low cost, I am convinced that politicians will concur. Moreover, when ECLs have been implemented not only in the EU but also in the United States, a critical mass will arise which, in all likelihood, will lead to the rest of the world choosing the same solution – this will give the other libraries and their users a *de facto* opportunity to gain access to relevant collections.

Digital access and a global library are possible but when the issue is elevated to the global level, other issues will arise. Every country and regime does not necessarily take the same line in respect of freedom of speech and other values. A regime can use ECLs in order to control information instead of opening up to be accessed. Some countries' interest may thus be a double-edged sword. Similarly, there are divergent views as to what is permissible. World events show that something which freedom of speech permits in one place may be cause for violently silencing voices elsewhere. This is also an important issue, albeit one for another article.

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