

**”The Serpent in the Garden of Eden”:
Intellectual property in the
Digital Millennium**

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Abstract:Disposition of the scientific information and document supply, conceived in the form known after World War II, evolved in the interaction of the different structures of the scientific information and documents, is definitely in the digital phase today. New technologies have provided quite revolutionary changes and on the other hand, social, cultural and philosophical contours of the science – as communication, evaluation, intellectual property, ethics etc, remain in classic forms, which implies many irregularities in our everyday activities. New copyright laws in the digital era and implications of these laws in national legislation (USA, EC, Serbia) predict some of them. Situation in the field, however, reveals abundance of controversy concerning scientific document supply. The last decade certainly records fall in the Document supply and an apparent dominance of other types of access to scientific information and documents, which in our practice are retrospective conversion of serials, massive digitization of books and various forms of open access. This has led to radical changes in the approach to scientific information, but also to quite different situations in the field of intellectual property.

Consortia’s licenses represent an important and delicate instance of copyright, concerning supply of scientific documents. This paper systematizes legal and ethical moments in the implication of copyright in the modern scientific supply documents and gives some answers on the contemporary practice in the world.

Keywords: Intellectual property, Copyright, Document supply

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This article examines issues of intellectual property, particularly the issues of copyright and related rights, in the digital millennium supply of scientific papers.

The Serpent in the Garden of Eden is the motto, which was, in the context of the e-books interlibrary loan, used as a title by Bill Rosenblatt, in the article published in March this year¹. The paper deals with the latest restrictions imposed by certain publishers (HarperCollins), regarding licenses for e-books use and loan in libraries. We'll take it as a good example of the absurd, enigmatic or absolute parabola, so the one whose structure, whether it is simply understood as an image or as a literary type, is not reduced to some kind of moral lesson or expressing the truth, but rather, like Beckett's or Kafka's parabola, in paradox, absurdity or an absolute enigma. We observe it in the context of scientific papers document supply and in the context of the present paradigm of change on a global scale. What kind of a paradox, absurd or absolute enigma we deal with today when the document supply is in the question? What has been gained and what lost by issuing a set of regulations on protection of copyright and related rights, in other words: who is the snake and what it wants to offer to us?

Digital content that appears as the material in the supply of documents (electronic books, articles, literature...) carries with it different legal framework when it comes to distribution and manipulation of such content too.

Copyright holders in the digital environment (most often publishers) have absolute control of original works and information. They control every aspect of access, reproduction and distri-

¹ E-Book Lending: The Serpent in the Garden of Eden. Taken from the Internet 14th august 2011: <http://copyrightandtechnology.com/2011/03/03/e-book-lending-the-serpent-in-the-garden-of-eden/>

bution of this material, thereby increasing their own profits and like never before, disrupting the necessary balance between copyright and public interests. There is a number of laws:

The WIPO Copyright Treaty and
The WIPO Performance and Phonograms
Treaty (1996),

which give exclusive right to the author in cases where an individual has a technical possibility to access a work of art from the place and at a time of individual choices.

.....
... authors of literary and artistic works shall enjoy the exclusive right of authorizing any communication to the public of their works, by wire or wireless means, including the making available to the public of their works in such a way that members of the public may access these works from a place and at a time individually chosen by them. (Article 8, WIPO Copyright Treaty)
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However, Article 10 of this Treaty regulates copyright limitations and exceptions. Signed by 59 states, this convention was the basis of all later legal implications.

The most controversial implementation of these articles is certainly the *Digital Millennium Copyright Act* (DMCA), passed in the United States in 1998. Although this act, too, contains exceptions in the case of "nonprofit library, archive, and educational institutions," which are given facilitated access to a literary or artistic work (Article 1201 (d), pg. 5, *Digital Millennium Copyright Act*, 1998), both the practice and the numerous polemics that the Act has provoked tell a different story (for example, out of 10

requests for resource sharing that University Library “Svetozar Markovic” addressed to university libraries in the United States, it received two responses (non-digitalized material, sent by mail, whose copyright protection, incidentally, had unequivocally expired), while the other requested loans were forbidden for reasons of copyright infringement) (Pavlovic, A.&Filipi Matutinovic, S., 2010, p. 211).

In brief, since a library is not in position to control further distribution of electronically forwarded digital material to users, document supply is limited exclusively to the delivery of analog copies. So is the very important stage of the scientific communication of the new millennium, emerged from the revolutionary development of information technology, regressed to its previous – non-digital, analog, classical, “paper” one.

Of further importance to us are a number of directives, notably the *Copyright Harmonization of Duration of Protection* (1993/98/EC), extended to 70 years, and, especially, the Directive on the Harmonization of Certain Aspects of Copyright and Related Rights (2001/29/EC). This directive literally reiterates the provision of the exclusivity of the author’s rights to permit or ban the public disclosure of a work, including interactive communication and has left a significant imprint on most major national legislations.

The imbalance that has appeared in the confrontation of the legal protection of holders of copyright and related rights and the interests of and usefulness to the public and society of their literary and artistic works, as well as blocking the channels of adequate communication in science, in favor of profit growth, represent, we believe, the greatest possible paradox and misfortune of these decades. The meaning of the first copyright law, The English Statute of Anne (1710) was “the encouragement of learning” (The English

Statute of Anne - An Act for the Encouragement of Learning, 1710), three hundred years later is reduced to simply “encouragement of profit growth”.

Free flow of information, the very foundation of the Universal Declaration of Human Rights, is equally neglected.

Forms of the opposition to this kind of ethics are institutional, semi-institutional and non-institutional. The institutional ones are efforts of institutions – consortia and associations, negotiations with publishers, licenses, copyright exceptions and limitations and certainly Open Access.

In their book, *Pirates of the Digital Millennium: How the Intellectual Property Wars Damage Our Personal Freedoms, Our Jobs, and the World Economy*, Gantz and Rochester speak of “digital utopian communities” and “hippy communes” as possibilities to free flow of information and defense against the rigidity of recent law on intellectual property (Gantz, Rochester, 2007, pp. 289) and in a sense, represent kind of semi-institutional efforts. Contemporary interlibrary loan is more and more in a position to use them: the movement for open access, free copy zones (copyright free websites, for example, Maine University Media Laboratory website Still Water Lab (2003) <http://www.newmedia.umaine.edu/stillwater/#>, Swarthmore Digital Commons <http://swarthmore.freeculture.org>, Creative Commons <http://creativecommons.org>). These are different forms of open access (Pavlovic, 2009, pp. 94).

Last but not least, we can see non-institutional efforts against “encouragement of profit growth” in a number of contemporary critiques, especially Marxist critiques, where copyright law is regarded as a tool of capitalism, while the main points of a hacker philosophy are perceived as

a creativity and resistance to the domination of capital over technological development. (Söderberg, 2002).

There is a fairly recent “Imagine a World Without Free Knowledge – Blacking out Wikipedia” case – with explanation, which is the right example of this aspect of opposition:

.....
For over a decade, we have spent millions of hours building the largest encyclopedia in human history. Right now, the U.S. Congress is considering legislation that could fatally damage the free and open Internet. For 24 hours, to raise awareness, we are blacking out Wikipedia (Wikipedia, 18. January 2012).
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Worth mentioning here are also the Piratbay’s creativity, Julian Assange’s high-mindedness and the wit of the movement “Download as a Civil Disobedience”, whose efforts go in the direction of releasing definitely the information, but most certainly – the human spirit.

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