

Intellectual Property issues for digital libraries in the Internet networked public sphere

BY

Dionysia Kallinikou

*Attorney-at-Law (Athens Bar Association),
Professor of Law, Athens Law School, National & Kapodistrian University of Athens
kallinikoudionysia@yahoo.gr*

&

Marinos Papadopoulos J.D., M.Sc.

*Attorney-at-Law (Athens Bar Association)
marinos@marinos.com.gr, URL: www.marinos.com.gr*

&

Alexandra Kaponi, LL.M.

*Attorney-at-Law (Athens Bar Association),
Judge-Panellist of the EU Court for .eu domain names,
Associate Legal Advisor to the National Telecommunications & Post Commission in Greece for .gr
domain names*

alexandra@marinos.com.gr, URL: www.marinos.com.gr

&

Vassiliki Strakantouna M.Sc.

*Librarian at the Civil Law School Library,
Athens Law School, National & Kapodistrian University of Athens
vstrakan@lib.uoa.gr*

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Abstract

The development of Digital Libraries and repositories, a worldwide vision with enormous political and ideological importance for humanity, in an effort to approach cultures and preserve plurality and diversity, is directly affected by the provisions of Intellectual Property Law and is subject to the consideration of innovation through legislation. Legal issues such as these related to software use, database protection, the collection, digitization, archiving, and distribution of protected works are of utmost importance for the operation and viability of Digital Libraries and repositories. In this whitepaper, we focus upon some of these legal issues and consider an alternative proposal in respect of Intellectual Property law for open access to creative works furnished to the public through Digital Libraries and repositories.

Keywords

Intellectual property, digital libraries, collecting societies, peer-to-peer, copyright, file-sharing, copyright right-holders, Law 2121/1993, three-step-test, openness, open access, open access journals, digital rights of copyright, Creative Commons

INTRODUCTION

Information technology enables the reproduction, saving, and distribution of culture, arts, and sciences as well as the recording of the collective memory of humanity. Not only does information technology make almost all kinds of human creativity available in the Internet networked public sphere, but also it enables the creation of new forms of art, creative expression, and distribution of knowledge. More often than not, the rapid pace in the evolution of information technology causes friction with Law in as much as Regulators' foresightedness could not have ruled to cope with new social trends, socio-political and economic phenomena in the market. Thus, the evolution of information technology is frequently seen as a factor that sets at stake the legal rights of creators and right-holders, as a cause for stricter Intellectual Property Law and legal protection for the initial and subsequent right-holders. The instantaneous reaction towards making the Law stricter regarding the availability, use, and distribution of creative works via the Internet networked public sphere is—in most cases—a hazard to the evolution of digital libraries (hereinafter, DL) and repositories, i.e. organizations which leverage upon the radical changes caused by information technology and the tremendous capabilities that it has inferred upon the availability, use, and distribution of culture, arts, and sciences to the people. Making the Intellectual Property Law stricter in consideration of the rights of creators and right-holders, and most commonly the financial interests of them associated with the exploitation of their works in the markets, is not an option that satisfies at least to the point that it does not sufficiently cater for the interest of people and/or DL and repositories in having access and making use of creative works leveraging upon the dynamic of new Internet networked media. We have reached a point at which the challenge to amend the Intellectual Property Law with the aim to consider favourably the changes in society caused by information technology, and to balance the conflicting interests of all the involved parties, i.e. creators, right-holders, and the people, in the creation, use of, distribution, and re-creation (remix) of protected works, is bigger than ever, at least in the history of Intellectual Property Law.

The development of DL and repositories, a worldwide vision with enormous political and ideological importance for humanity, in an effort to approach cultures and preserve plurality and diversity, is directly affected by the provisions of Intellectual Property Law and is subject to the consideration of innovation through legislation. Legal issues such as these related to software use, database protection, the collection, digitization, archiving, and distribution of protected works are of outmost importance for the operation and viability of DL and repositories. In this whitepaper, we will focus upon some of these legal issues and consider an alternative proposal in respect of Intellectual Property law for open access to creative works furnished to the public through DL and repositories. Open access for DL is a sine-qua-non prerequisite for their viable operation. It's like oxygen for human beings.

DL & ETHICS

DL acquire, organize and secure life-long access to creative works which are the building blocks of our civilization. Libraries are the repositories of human knowledge; they are our past, our present and our future.¹ Aside from the focus, the special collections and the added-value services which a DL may encompass, the main reason for the existence and development of any DL is the need to serve people in their quest to access knowledge. DL have always been gates through which people could access knowledge hosted in the premises of these organizations. Libraries have adopted internal regulations, abide by national laws and international practices with the aim to achieve their goals, i.e. satisfy people's quest for knowledge and creative works. While almost all libraries and librarians acknowledge the need to abide by Intellectual Property law that protects the interests of authors and creators, initial and subsequent right-holders, they do also show unwillingness to transform from organizations that enable access to knowledge into gatekeepers of locked-in, inaccessible knowledge.

The founding principle in accordance of which libraries ought to operate in a way that considers the interests of all, i.e. creators and authors, initial and subsequent right-holders, and the general public, and

¹ Mason, Moya K. (2009) The ethics of librarianship, available at URL: <http://www.moyak.com/papers/ethics-librarianship.html> [last check, April 10, 2009].

manage the works and collections hosted to them in a way that does not deviate from the framework of law creates legal and ethical obligations for librarians. The ethical and/or professional conduct of librarians ought to depict their commitment to society to acquire, organize and secure access to the elements of civilization, and should stress the important role that librarians could play in the wide distribution of knowledge.² The most profound ethical issues or dilemmas facing librarians concerns censorship, selection of materials and intellectual freedom, copyright, patron privacy, computer use, the Internet and plagiarism (Dole, 2000).³ Also, they do have a call upon issues such as the way that individuals make use of the copyrighted works and the extent that creators of such works control their use and dissemination. During the last years ethical challenges presented to librarians and information workers have increased dramatically and the ethical dilemmas faced are numerous. Technological innovation, for example, enables us to create “brave new worlds.” But automated environments are unfamiliar worlds. Our old intuitive habits of evaluation, which are adequate for determining what is best in traditional worlds, are inadequate in new and different settings (Severson, 1995).⁴

The widely respected principles of ethical and professional conduct in librarianship could greatly assist in the development of a wide network of organizations allowing for access to, use of, and distribution of knowledge in society irrespectively of factors such as financial power that keeps many members of it deprived of knowledge for sale. The codes of ethical and professional conduct in librarianship usually have the form of a set of rules for self-regulation⁵ and describe the principles of conduct that govern the librarians of a certain organization and/or professional librarians of a wider group of peers. Recognizing the importance of having a code of ethics, library associations have a long history of developing and promoting ethics for the profession (Hoffman, 2005).⁶ The promotion of open access to knowledge and information, the protection of privacy, the respect for copyright and right-holders, and the freedom of speech are some of the founding principles that govern most of these codes of conduct for professionals in the industry of libraries.

Copyright is a legal concept part of a broader notion of intellectual property with critical legal and ethical issues for the librarianship community. Copyright compliance is both a legal and an ethical issue. An information professional need to ensure that his activities remain on the right side of the law and that his conduct is ethical.⁷ The principle of information professionals to recognize the rights of creators and copyright holders of copyright-protected library and information material is explicitly stressed in most librarian’s codes of conducts.⁸ To name a few, the codes of conduct of the German Association of Libraries and Information Scientists (BID)⁹ and the American Library Association (ALA)¹⁰ are notable examples of such texts of self-regulation in librarianship. In the UK the CILIP’s ethical principles and code of professional practice make clear that the conduct of members should be characterized by “Respect for, and understanding of, the integrity of information items and for the intellectual effort of those who created them” and members has the responsibility to “defend the legitimate needs and interests of information users, while upholding the moral and legal rights of the

² Rubin, R.(2000) Foundations of Library and Information Science, New York, Neal-Schuman publ. , p.265-296.

³ Dole ,W.V. and Hurych, J. M. and Koehler, W. C.(2000) Values for Librarians in the information age, *Library Management*, 21(6), 285-286.

⁴ Severson, R. (1995) The recovery of ethics in librarianship, *Journal of information ethics*, 2(2), 11-15.

⁵ By the term ‘self-regulation’ we mean the adoption of regulation and a framework of obligations and rights which are created through voluntary commitment of all members of a certain community. Self-regulation is a kind of self-governance in cyberspace. See Mitrou, L. (2002) The Law in the Information Age, Sakkoulas.

⁶Hoffman, K (2005) Professional ethics and Librarianship, *Texas library journal*, available at URL: www.tsla.org/pubs/tlj81/Ethics.pdf,

⁷ Pedley, P. (2007) Digital Copyright, Facet Publ..

⁸ See International Federation of Library Associations (IFLA), the Codes of Conduct adopted by Librarians Associations of various countries, most of which stress the importance of balancing the conflicting interests of library-users and copyright-holders. See Codes of Conduct through URL: <http://www.ifla.org/faife/ethics/codes.htm>, [last check, April 10, 2009].

⁹ See IFLA/FAIFE, BID’s code (Bibliothek und Information Deutschland), stand March 19, 2007, according to which is made clear that the information professionals recognize the rights of creators and copyright holders of copyright-protected library and information material. BID’s code is available at URL: http://www.ifla.org/faife/ethics/germany_code_of_ethics-de.htm [last check, April 10, 2009].

¹⁰ See IFLA/FAIFE, ALA, *Code of Ethics*, 1995, available at URL: <http://www.ifla.org/faife/ethics/alacode.htm> [last check, April 10, 2009] & at URL: <http://www.ala.org/ala/aboutala/offices/oif/ifgroups/cope/Code%20of%20Ethics%202008.pdf> [last check, April 10, 2009]. In Section IV it states explicitly that ALA members “recognize and respect intellectual property rights” recognizing that authors and creators of works have the right to benefit from their creativity.

creators and distributors of intellectual property.”¹¹ In Greece, the Hellenic Association of Librarians and Information Scientists promotes the adoption of a code of conduct for all its members. Among other issues said code of conduct reports that “the librarian ought to make sure that a user has access to information and works available to the public without any restriction that is not necessary in consideration of law or other regulation.”¹²

While libraries’ approaches to copyright and intellectual property can be understood as legal compliance or as an ethical concern in various countries of the world, according to Schachaf and Rubenstein’s survey, that compares institutional policies as they appear on the Web sites of academic libraries in Israel, Russia, and the United States, is an ethical concern. For one reason, the appearance of intellectual property in the code of ethics indicates that the professional association considers it to be an ethical concern.¹³ It is possible that the professional code of ethics addresses copyright and intellectual property concerns only in countries where the law, for one reason or another, is not perceived to be sufficient by the librarians. It is in these countries that the issue becomes an ethical concern. Compliance with copyright laws in a country is likely to reflect the general level of individuals’ and organizations’ (such as academic libraries) compliance with the laws in this country. These differences among the countries may be further explained by political, social, technological, and economic factors.

In the new environment of information and communication systems, the protection of legal rights can hardly be achieved through the application of codes of conduct, only. Ethics and professional principles of librarianship are not enough to cope with conflicting interests and rights such as people’s right to have access to information and knowledge from one side and the author’s right for communication to the public of his work including the making available to the public of his 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. Ethics and professional principles of librarianship are useful to the point that they can regulate the relations among librarians as well as between them and users of libraries. It is questionable, though, whether these codes of conduct can regulate upon issues such as copyright protection and/or people’s right for access and use of copyrighted works. In most societies, the rule of law is not a matter of professional organizations but rather of legislators and the Parliament.¹⁴

The need to overcome the weakness of law as well as of self-regulation regarding the enforcement of rules upon all the stakeholders of the librarian community may lead to the application a hybrid model for regulation, i.e. the model of co-regulation which is a remix of self-regulation and legislation. It’s a model that caters for consultation processes among members of the librarian community with the aim to (re)consider new trends in librarianship and produce consensus upon them of all interested members.¹⁵ The State through its legislative power remains the ruling player in this hybrid model. However, this hybrid model emphasises upon the State’s role to amend legislation once new trends and status-quo in the market allows for such an amendment.¹⁶ After all, the State’s legislative power in librarianship is limited by the social developments which alter the forms and means of libraries’ various operations and services as well as the central role that libraries play in saving, archiving, and disseminating knowledge, arts, science, and culture in society.

While most librarians have been engaged in a relentless effort to secure proper protection for copyright holders for works deposited in DL, yet the vagueness in regulation regarding permitted uses of works in the environment of DL inevitably causes tension among right-holders of copyrighted works, librarians, and the end-users of works. A tension that as some scholars suggest is analogous to war, i.e. the copyright war. But what is the role of a librarian in this war? As Pnina Schachaf and Ellen

¹¹ See IFLA/FAIFE, The Library Association Code of Professional Conduct, available at URL: <http://www.ifla.org/faife/ethics/lacode.htm> [last check, April 10, 2009]. The Chartered Institute of Library and Information Professionals (CILIP) has developed a set of ethical principles and a Code of Professional Practice for Library and Information Professionals available at URL: <http://www.cilip.org.uk/policyadvocacy/ethics/code.htm> [last check, April 10, 2009].

¹² See The Hellenic Association of Librarians and Information Professionals at URL: <http://www.eebep.gr> [last check, April 10, 2009].

¹³ Schachaf, P. and Rubenstein, E. *A Comparative Analysis of Libraries’ approaches to Copyright: Israel, Russia and the U.S.* available at URL: <http://dlist.sir.arizona.edu/2117/01/approachesToCopyright.pdf> [last check, April 10, 2009].

¹⁴ Strakantouna, V. and Piskopani, A-M. And Mitrou, L.(2007) Personal Data and Libraries, *Private Law Chronicle (Xronika Idiotikou Dikaiou) (Z)*, 281-288.

¹⁵ Mitrou, L. (2002) *ibid.*, p.69.

¹⁶ Mitrou, L. (2005) Self-Regulation in Cyberspace, Sakkoulas , pp.22-24.

Rubenstein, suggest librarians can take an active role by joining creators and right-holders or users and engage in fighting. They can serve as moderators who promote peace or maintain cease-fire between each side. They can also play more passive roles by observing and reporting the war or by remaining uninvolved. Whatever the role of librarians is, it is clear that they should follow their ethical guidelines and comply with copyright law.¹⁷

DL & P2P

The DL of the 21st century is a hybrid form of a library that deviates from the traditional book-keeping library of the past. The term “Digital Library” was coined because of the Internet and refers to an evolved new form of a library that could cover a wide range of information services.¹⁸ The DL of the 21st century is not merely a host of digitized books and collections, but rather it’s an integrator of information management systems, that consists of important elements such as data and metadata, human contribution (creators, users, managers), IT infrastructures (computers, networks, software) which are all orchestrated with the aim to organize, manage, and make available to, i.e. open access to, knowledge and information to library-users.¹⁹ The DL of the 21st century is a borderless organization much like the Internet is a borderless network of networks. Access to DL does not depend any more upon proximity to the local physical premises of the organization. In addition, access to the contents of a DL does not require ownership of an item that becomes available through it. Instead of “owning” the publication, DL are “leasing” it under a license agreement. DL’s focus has turned from the quest how they will digitize materials, store them and make them available to the quest how they will manage the rights along with the materials.²⁰

And that is because the architecture per se of a digital library is different than what we’ve been used to. It is a peer-to-peer (hereinafter, P2P) architecture.²¹ P2P technological networks are of vital importance for the evolution of DL.²² Actually, on the eve of DL, P2P technological networks evolve as technological infrastructure that is an important architectural element for DL’s networking with peers and competitive advantage. During the ‘90s, the Internet consisted mainly of client/server models which are uncomplicated methods to manage and control the distribution of content. During the last years, however, several aspects of IT developments such as the widespread penetration of broadband Internet, more connectivity, mobility, the evolution of compression technology, the demand for more storage capacity, more CPU power, and a large amount of content residing on the personal computers of end-users, have changed the way in which users and prospective DL stakeholders connect to the Internet and

¹⁷ Schachaf, P. and Rubenstein, H. *ibid.*

¹⁸ Bokos, G., (2001) Introduction to Information Science, Papassotiropoulos p.168.

¹⁹ Atkins, D. E. (1997) *Report of the Santa Fe Planning Workshop on Distributed Knowledge Work Environments: Digital Libraries*, Report Version September 20, 1997, in which it is stated that “the concept of a “digital library” is not merely equivalent to a digitized collection with information management tools. It is rather an environment to bring together collections, services, and people in support of the full life cycle of creation, dissemination, use, and preservation of data, information, and knowledge.” Available at URL: <http://www.si.umich.edu/SantaFe> [last check, April 10, 2009]. See also Griffin, St. M., *NSF/DARPA/NASA Digital Libraries Initiative, A Program Manager’s Perspective*, available at URL: <http://www.dlib.org/dlib/july98/07griffin.html> [last check, April 10, 2009], and L. Candela, D. Castelli, N. Ferro, Y. Ioannidis, G. Koutrika, C. Meghini, P. Pagano, S. Ross, D. Soergel, M. Agosti, M. Dobрева, V. Katifori, H. Schuldt, The *DELOS Digital Library Reference Model* available at URL: http://www.delos.info/files/pdf/ReferenceModel/DELOS_DLReferenceModel_0_98.pdf [last check, April 10, 2009], which defines a digital library as: An organization, which might be virtual, that comprehensively collects, manages and preserves for the long term rich digital content, and offers to its user communities specialized functionality on that content, of measurable quality and according to codified policies.

²⁰ Coyle, K (2004) The rights in the Digital Rights Management, *D-Lib Magazine*, **10**(9) available at: <http://www.dlib.org/dlib/september04/coyle/09coyle.html> [last check, April 10, 2009].

²¹ Kallinikou, D.; Papadopoulos, M.; Kaponi, A; Strakantouna, V. (2009) ,Alternative system for non-commercial use of intellectual property in consideration of free P2P file-sharing, pp.3-7, available at URL: <http://www.marinos.com.gr/bbpdf/pdfs/msg77.pdf> [last check, April 10, 2009].

²² See Ioannidis, Y. and Schek, H.-J. and Weikum, G., (2005). *Future Digital Libraries Management Systems: System Architecture and Information Access*, 8th DELOS Thematic Workshop, Schloss Dagstuhl, Germany, available at URL: http://dbis.cs.unibas.ch/delos_website/D1.1.2%20-%20Workshop%20II%20on%20DL%20Access%20and%20Architecture%20jointly%20with%20WP2%20FUTURE%20Digital%20Library%20Management%20Systems%20System%20Architecture%20and%20Information%20Access.pdf [last check, April 30, 2009].

make use of the content available online.²³ The combination of IT developments makes it difficult for DL to gain profit via the client/server model. DL infrastructure cannot scale based on the client/server model; but it can if it leverage on the P2P architecture.²⁴

The widespread penetration of the Internet causes content providers to explore new distribution platforms that provide solutions for the disadvantages of the client/server models. DL, publishers, the media industry and end users are exploring systems and platforms to publish and distribute online services and content. P2P have demonstrated the opportunities of this disruptive technology regarding the evolution of DL. P2P systems have often been described as the counterpart of client/server networks.²⁵ In client/server systems, centralized servers manage and control the network, provide services and resources whereas the clients consume these resources. Several client/server networks can hardly meet the demand for resources because of an increasing number of users, higher bandwidth traffic and the arrival of a variety of applications. The major drawbacks of client/server systems in comparison with P2P is that the client/server models suffer from inefficient allocation of resources and limited scalability which can result in bottlenecks and eventually in single points of failure. Furthermore, additional users stand for additional costs as they consume more bandwidth of the system. Nodes in P2P networks do not only act as clients, but they exhibit server functions as well.²⁶ In addition, client/server networks are not scalable and are susceptible to bottlenecks and single points of failure whereas P2P networks are characterized by scalability, decentralization, transient connectivity, cost efficiency, fault tolerance, self organization, sharing of resources and autonomy.²⁷ In theory, P2P systems exhibit positive network externalities in a way that additional users²⁸ add value to P2P networks by introducing extra resources in the system. In this way, users preserve the system and influence the functioning, performance and control of the network by making their resources available. Therefore, it is critical for DL the deployment of a P2P system that is able to cope with the transient presence of nodes, network/computer failures, and be capable to self-organize itself in the absence, more often than not, of centralized coordinating components.

This kind of needs and technological requirements for DL seems that P2P architectures satisfy, thus P2P plays a crucial role for DL. For example, in the Federated Digital Library (FDL) model, which is one of the classic solutions for sharing information among libraries in relevant topics, there is a group of organizations, working together formally or informally, that agree to support a set of common services and standards, thus providing interoperability among their members.²⁹ Conventionally, most of FDL were built in the client/server fashion. However, with the sharp growth of an enormous number of DL, especially those moderate-sized ones, there becomes a performance bottleneck problem in FDL based on the client/server model. The solution to this bottleneck problem in FDL appears to be the P2P architecture. Additionally, P2P architecture in DL seems to provide solutions to problems arising not only from scalability, but also from the granularity and meaning in metadata elements used widely in DL. Due to the semantic heterogeneity resulting from the different metadata schemas employed by

²³De Boever, J. *Peer-to-Peer Networks as Distribution and Publishing Model*, available at URL: http://elpub.scix.net/data/works/att/128_elpub2007_content.pdf [last check, April 30, 2009].

²⁴ Krishnan, R. and Smith, M.D. and Tang, Z. and Telang, R. (2006) *Digital Business Models for Peer-to-Peer Networks: Analysis and Economic Issues*, available at URL: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=917899 [last check, April 30, 2009], Travis, H. (2005) Building Universal Digital Libraries: An Agenda for Copyright Reform, *Pepperdine Law Review*. 33, 761-829, available at URL: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=860784 [last check, April 30, 2009].

²⁵ See Pourebrahimi, B. and Bertels, K. and Vassiliadis, S. *A Survey of Peer-to-Peer Networks*, available at URL: http://ce.et.tudelft.nl/publicationfiles/1075_526_prorisc05.pdf [last check, April 30, 2009].

²⁶ This is why nodes or peers have been described as servants (SERVer + cliENTS).

²⁷ See Androutsellis-Theotokis, St. and Spinellis, D (2004). *A Survey of Peer-to-Peer Content Distribution Technologies*, ACM Computing Surveys, 36(4), 335–371. available at URL: <http://www.spinellis.gr/pubs/jrnl/2004-ACMCS-p2p/html/AS04.pdf> [last check, April 30, 2009], Eberspächer, J. and Schollmeier, R. *First and Second Generation of Peer-to-Peer Systems*, In R. Steinmetz and Wehrle K. (Eds.). *Peer-to-Peer Systems and Applications*, Berlin Heidelberg: Springer-Verlag, 2005, p. 35-56.

²⁸ Such as DL, content providers, end-users, third-party DL-supporting and affiliated organizations, etc.

²⁹ Gonçalves, M. A. and France, R.K. and Fox, E. A. and Doszkocs, T. E., *MARIAN Searching and Querying across Heterogeneous Federated Digital Libraries*, available at URL: http://www.ercim.org/publication/ws-proceedings/DelNoe01/11_Fox.pdf [last check, April 30, 2009]. An interesting example of a FDL requiring interoperability is the Networked Digital Library of Theses and Dissertations (NDLTD), at URL: <http://www.ndltd.org>, which is an international federation of universities, libraries, and other supporting institutions interested in worldwide access to electronic theses and dissertations (ETDs).

various DL, the client/server models cannot furnish DL users with a searching application that does not end up as a difficult, complex, and ineffective task across distributed and heterogeneous digital repositories. DL may, also, collaborate with one another to provide content preservation by storing each other's material. Systems such as OceanStore³⁰ and Intermemory³¹ employ this idea.

By attempting to deprive DL from P2P technological architecture and applications on the grounds of considerations for P2P legality, the result will be to impose higher costs than those projected on the deployment DL projects by depriving them of a method of distributing their output efficiently without incurring high costs. File-sharing software, including the P2P applications is capable of cheaply and quickly distributing thousands of public domain literary works such as those made available through Project Gutenberg³² as well as those historic public domain films released by the Prelinger Archive.³³ Distributing works such as books, music, and movies over the Internet can be prohibitively expensive for DL as well as non-profit entities such as Project Gutenberg or the Internet Archive, which must divert scarce resources to purchasing bandwidth and data storage, if they are not allowed to leverage upon the P2P architecture and applications, instead of digitizing more books. File-sharing software permits these entities to shift storage and bandwidth costs onto readers and Internet users more generally, and preserve limited budgets for core mission tasks. File-sharing programs let Internet users do much more than substitute MP3 downloads for CD purchases, including locate public domain music, listen to recordings of live performances in which musicians do not claim copyright, rediscover out-of-print or hard-to-find books or music, and sample albums before buying.³⁴ If it works so for Internet users, it does work the same for DL. P2P represents a great technological advantage in information and communication core technological infrastructure for the evolution of DL. None of the great advances in information and communications technology, from the photocopier to the videocassette recorder, personal computer, and Internet, would have been viable had all copyright infringements by their users been imputed to their manufacturers.³⁵ The legal assault on P2P technologies and the “zero tolerance policy” articulated in the Napster and Aimster cases in the U.S., and which has been used henceforth from content providers and intellectual property right-holders with the aim to attack every possible P2P application that come across, represents a radical departure from legal principles of civil law, and will unnecessarily deprive Internet users of a variety of noncommercial content and many of the benefits of P2P technology and DL leveraging upon it.³⁶

³⁰ Chen, Y. and Katz, R. and Kubiawicz, J. (2000) *SCAN: A dynamic, scalable and efficient content distribution network*, Computer Science Division, University of California at Berkeley, USA, available via URL: <http://www.springerlink.com/content/wmxcyyp86urbmpx> [last check, April 30, 2009].

³¹ Chen, Y. and Edler, J. and Goldberg, A. and Gottlieb, A. and Sobti, S. and Yianilos, P. - N. (1999) *A prototype implementation of archival intermemory*, available at URL: <http://pnylab.com/pny/papers/improto/improto.pdf> [last check, April 30, 2009].

³² See Project Gutenberg at URL: http://www.gutenberg.org/wiki/Main_Page [last check, April 30, 2009]. Project Gutenberg is the first and largest single collection of free electronic books, or eBooks. Michael Hart, founder of Project Gutenberg, invented eBooks in 1971 and continues to inspire the creation of eBooks and related technologies today.

³³ See Prelinger Archive at URL: <http://www.archive.org/details/prelinger> [last check, April 30, 2009]. The Prelinger Archive was founded in 1983 by Rick Prelinger in New York City. Over the next twenty years, it grew into a collection of over 60,000 “ephemeral” (advertising, educational, industrial, and amateur) films. In 2002, the film collection was acquired by the Library of Congress, Motion Picture, Broadcasting and Recorded Sound Division. Prelinger Archive remains in existence, holding approximately 4,000 titles on videotape and a smaller collection of film materials acquired subsequent to the Library of Congress transaction. Its goal remains to collect, preserve, and facilitate access to films of historic significance that haven't been collected elsewhere. Included are films produced by and for many hundreds of important US corporations, non-profit organizations, trade associations, community and interest groups, and educational institutions. Users of the Prelinger Archive are warmly encouraged to download, use and reproduce these films in whole or in part, in any medium or market throughout the world. They are also warmly encouraged to share, exchange, redistribute, transfer and copy these films, and especially encouraged to do so for free. Any derivative works that they might produce using these films are theirs to perform, publish, reproduce, sell, or distribute in any way they wish without any limitations. Their right to use these films is granted by the Creative Commons Public Domain license.

³⁴ Travis, H., *ibid.*, (2005), p.824.

³⁵ Travis, H., *ibid.*, (2005), p.826, and note 425 attributing this argument to Justice David H. Souter and Justice Antonin Scalia, with respect to Xerox photocopier and Apple iPod MP3 player.

³⁶ Travis, H., *ibid.*, (2005), p.826, and note 427 regarding Lawrence Lessig's arguments presented in his book *Free Culture—How Big Media Use Technology and the Law to Lock Down Culture and Control Creativity*, The Penguin Press, 2004, available at URL: <http://www.free-culture.cc/freeculture.pdf> [last check, April 30, 2009].

DL & COPYRIGHT

DL as repositories of works include in their contents copyrighted works as well as works under no copyright such as works in the public domain. DL could include in their contents works delivered in any medium and format. Frequently, DL are the licensed creators of derivative works, i.e. a variety of digital media and formats of the same work furnished to it. A DL, also, could contain many different copyrights. For example a textual article or e-book are protected as literary works, photographs as artistic works, a music DVD or CD as a musical work. The DL's website could also subject to different copyrights. Components could be protected by the right of communication to the public or qualify for the database right protection.³⁷ The Copyright issues that pertain to the legitimate operation of a DL are complex and usually difficult to resolve once a dispute arose. Intellectual Property has always been in the crossroads of conflicting interests among the creators, right-holders, and the general public, and it has always been a vexing problem to balance among conflicting copyright-related interests.³⁸ This two-sided reality of Copyright is explicit in article 27 of the Universal Declaration of Human Rights. The Constitution of Greece caters for the protection of intellectual property in its provisions, and specifically the provisions of article 2§1, article 5§1, article 14§1, article 16§1, article 17, article 18§5, and article 28§1. Copyright law in Greece, which is outlined by Law 2121/1993³⁹ as amended since 1997 and onwards, provides definitions and protections for intellectual property rights. The copyright has an exclusive and absolute character, but is subject to limits that are determined by the concept of the work or are explicitly prescribed by law as to the term and extent of the right. The scope of copyright comprises works as intangible goods, irrespective of the material on which the work is incorporated. The main features of the work are form and originality.⁴⁰ The idea is not protected by copyright, unless it takes up a specific form. In this regard, processes, operating methods and mathematical concepts *per se* are not protected. Despite occasional controversies and concerns, the distinction between form and idea is a substantial rule for determining the extent of copyright protection. The idea is free and accessible by anyone, constitutes common property and cannot become subject to copyright, unless it has taken up some form. In this respect, it has been held that scientific discoveries or theories are not *per se* protected by copyright. A scientist cannot acquire the copyright of a theory or discovery because that would bring scientific and technological progress to a halt. The idea belongs to everybody, but the way that an artist's inspiration and emotion are expressed belongs exclusively to his/her personality and these are the features that are protected. Copyright can only protect the form and, in this regard, scientific legal works are subject to protection, both by national legislation and international treaties such as the Berne Convention⁴¹ article 2§1, as well as the TRIPS Agreement on trade-related aspects of intellectual property rights,⁴² and the WIPO Copyright Treaty⁴³ and the WIPO Performances and Phonograms Treaty.⁴⁴ According to the article 5§2 of the Berne Convention the employment and the exercise of the copyright shall not be subject to any formality.

On the basis of the above points, any scientist or researcher may write a book on civil or administrative law, interpret a law of any content or comment on a court order. It should also be noted that protection does not extend to official texts that express the exercise of state power, especially legislative, administrative or judicial texts, not to the expressions of folk tradition, news and simple events or facts, unless any of them can be included in the category of compilations or derivative works. Specifically, protection does not extend to legislative, administrative or judicial texts because their purpose is to become broadly known for the sake of public interest. However, compilations of laws,

³⁷ Pedley, P. *ibid.*, (2005).

³⁸ Kallinikou, D. (2008) Archives, Libraries and Copyright. *Proceedings of the Conference, Archives, Libraries and the Law in the era of Information Society, Athens, February 2-3, 2006*.

³⁹ See Hellenic Copyright Organization, Law 2121/1993 available at URL: <http://web.opi.gr/portal/page/portal/opi/info.html/law2121.html> [last check, April 10, 2009].

⁴⁰ For the concept of work, see (in Greek) Koumantos, G. (2002), *Copyright*, 8th edition, Ant. Sakkoulas pp. 105 *et seq.*, Kotsiris, L., (2005) *Copyright Law*, 4th edition, Thessaloniki: Sakkoulas, pp. 53 *et seq.*, Kallinikou, D. (2008) *Copyright and Related Rights*, 3rd edition, P. Sakkoulas, pp. 29 *et seq.*, Marinos, M.-T. (2005) *Copyright*, 2nd edition, Ant. Sakkoulas, pp. 71 *et seq.*

⁴¹ Universal Copyright Convention as it was revised in Paris on July 24, 1971, adopted in Greece through Law 100/1975.

⁴² Adopted through Law 2290/1995.

⁴³ Adopted through Law 3184/2003.

⁴⁴ Adopted in Geneva on December 20, 1996; adopted through Law 3183/2003.

decrees, court orders etc. are protected under article 2§2 of Law 2121/1993. Simple events or facts, such as legal literature information, are not protected *per se* for lack of the element of originality. If, however, they take up the form of a compilation, they may be protected as collective works, provided that the selection or layout of their content is original (e.g. the literature list of a specific field of the legal science), without ruling out the possibility of extending protection to database creators by special rights. Apart from the conceptual limitations of copyright, the law imposes restrictions on the length of the right. According to the community *acquis*, the length of protection under national law is determined on the basis of the lifetime of the author and seventy years after his/her death, calculated from 1st January of the year after the author's death.⁴⁵ Special provisions of Law 2121/1993 cater for the duration of copyright in the case of works of joint authorship,⁴⁶ anonymous or pseudonymous works,⁴⁷ works published in volumes, parts, installments, issues or episodes,⁴⁸ audiovisual works,⁴⁹ and previously unpublished works.⁵⁰ This length applies to both the moral and the property right. On expiry of this period, the work falls into the public domain and may be freely exploited, subject to the exercise by the State represented by the Minister of Culture of the moral right, and specifically the powers to recognize the paternity and safeguard the integrity of the work.⁵¹ On the basis of the copyright law, public domain is relevant only to works whose period of protection has expired. Such works become common property and may be freely exploited.

This time restriction is mainly justified for reasons of protecting society. The recognition of copyright ensures that the author may take financial advantage of his/her work, thus boosting the cultural output of each country and the humanity as a whole. At some point of time, however, the work should be freely disseminated, so that it may become the property of all. It should be underlined that, for works legitimately published or presented to the public for the first time after the expiry of copyright protection, a related right is prescribed in Law,⁵² similar to the author's property right, whose validity expires twenty-five years after the first publication or presentation to the public. The related right of publishers, mainly as regards typesetting and pagination of published works, is valid for fifty years after the last edition of the work.⁵³ Therefore, it is necessary to examine the origin of the work and the rules applicable each time, since some times the length of the moral right is unlimited, such as in French law, while some works enjoy "perpetual" protection. Works with expired protection may become the subject of any use in the framework of operation of DL without the permission of the right-holder, unless other provisions apply, such as laws on the protection of cultural heritage. Material that has fallen into the public domain may be freely digitized and preserved in the framework of DL and repositories.

The definition of copyright in Law 2121/1993 is similar to the definition posed by international conventions and mandates that one cannot produce, copy, communicate, or transmit to the public copyrighted material such as literary, dramatic, musical, and artistic works, films, and sound recordings without the permission of the copyright owner and/or right-holder. There are exceptions to this broad restriction which are mainly described in Section IV of Law 2121/1993 (articles 18 et al. titled "Limitations on the Economic Right") including reproduction for private use,⁵⁴ reproduction for textbooks and anthologies,⁵⁵ reproduction for teaching purposes,⁵⁶ reproduction for libraries and archives,⁵⁷ among other provisions of section IV of Law 2121/1993, as well as clauses for exception from the reproduction right⁵⁸ and the three-step test.⁵⁹ Said limitations are set in law for reasons of

⁴⁵ Article 29§1 of Law 2121/1993.

⁴⁶ Article 30 of Law 2121/1993.

⁴⁷ Article 31§1 of Law 2121/1993.

⁴⁸ Article 31§2 of Law 2121/1993.

⁴⁹ Article 31§3 of Law 2121/1993.

⁵⁰ Article 51A of Law 2121/1993.

⁵¹ Article 29§2 of Law 2121/1993.

⁵² See article 51A of Law 2121/1993, note 58 hereto.

⁵³ Article 51 of Law 2121/1993.

⁵⁴ Article 18 of Law 2121/1993.

⁵⁵ Article 20 of Law 2121/1993.

⁵⁶ Article 21 of Law 2121/1993.

⁵⁷ Article 22 of Law 2121/1993.

⁵⁸ Article 28B of Law 2121/1993.

⁵⁹ Article 28C of Law 2121/1993.

social policy, aim at the protection of the interests of the public, are close in number, are applied as an exception to the rule of copyright protection, and should not have a broad interpretation.⁶⁰ The clause for the three-step-test in Law 2121/1993 which is in sync with article 9§2 of the Berne Convention for the protection of literary and artistic works as well as article 13 of the TRIPS Agreement on trade-related aspects of intellectual property rights, and articles 10 the WIPO Copyright Treaty and 16 of the WIPO Performances and Phonograms Treaty imposes limits in the meaning of private use which are subject to revision in consideration of technological, societal as well as legal developments in society.⁶¹ The three-step-test in the Greek Copyright Law helps to ensure authors that their works do not get corrupted either accidentally or maliciously. It also allows publishers to develop products without fear that their markets will be destroyed by copies from other sources.⁶² However, the three-step-test should not be interpreted in a manner that jeopardizes an adequate solution which balances the usually conflicting interests of the author, the subsequent right-holders and people's interest in making use of a work in Cyberspace. The public interest is not well served if Copyright Law neglects the more general interests of individuals and groups in society whereas it solely caters for the interests—financial interests most commonly—of the right-holders. The three-step-test is a means to balance the conflicting interests of the author, subsequent right-holders and the general public. It is a means to achieve equilibrium rather than imbalance in favour of either one of said involved parties. The three-step-test should be interpreted in a manner that respects the legitimate interests of third parties including interests deriving from human rights and fundamental freedoms, interests in competition notably on secondary markets, and other public interests notably in scientific progress and cultural, social or economic development.⁶³

DIGITAL (COPY)RIGHTS

Intellectual Property in our legal system, which is belongs to the Continental System, is addressed by two, distinctive and absolute rights, i.e. the moral right and the economic right. Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonization of certain aspects of copyright and related rights in the information society has introduced the so called “Digital Rights” in Copyright, namely the right for reproduction of copyrighted material, the right for distribution of copyrighted works, the right for communication of the work to the public in addition to the other known economic rights of copyright with which the creator and/or right-holder is empowered to permit or forbid the use of his/her work. These “Digital Rights” of the Copyright are of vital importance for the operation of DL. They are also cause of friction between DL and Collecting Societies
More specifically:

a) Reproduction of copyrighted material

A user and/or a DL are not allowed to reproduce or communicate copyrighted material unless permission is granted by the intellectual property right-holder. Unauthorized reproduction of such

⁶⁰ Marinos, M-T. (1994) The violation of Intellectual Property Right and of Related Rights, *Hellenic Justice Magazine (EllDik)* 35, p.1441 et al.

⁶¹ See article 28C of Law 2121/1993, note 67 hereto. See also article 5§5 of Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonization of certain aspects of copyright and related rights in the information society: *The exceptions and limitations provided for in paragraphs 1, 2, 3 and 4 [of article 5 of said Directive] shall only be applied in certain special cases which do not conflict with a normal exploitation of the work or other subject-matter and do not unreasonably prejudice the legitimate interests of the right-holder.* Also, see article 9§2 of the Berne Convention for the protection of literary and artistic works article 13 of the TRIPS Agreement on trade-related aspects of intellectual property rights, and articles 10 the WIPO Copyright Treaty and 16 of the WIPO Performances and Phonograms Treaty.

⁶² Arms, W. (2001) *Digital Libraries*, The MIT Press, p.117.

⁶³ See article 7 of Law 2290/1995 which transposed into the Greek legal framework for Copyright protection The TRIPS Agreement, and according to which *The protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations.* See also the WIPO Copyright Treaty available at URL: http://www.wipo.int/treaties/en/ip/wct/trtdocs_wo033.html [last check, April 30, 2009] the preamble to which emphasizes *the need to maintain a balance between the rights of authors and the larger public interest, particularly education, research and access to information.*

material leads to civil liability in the form of damages and criminal responsibility remedied through fines or potential imprisonment. Permission for exercising the right for reproduction of copyrighted material must be granted in writing otherwise it is null and void.⁶⁴ In case of granted permission which is not in print, nullity may be invoked only by the author.⁶⁵

One of the most important legal issues related to copyright is the need of DL to make copies for preservation purposes and/or for future use. It is more than common in the non-print environment, where either the fragility of the infrastructure per se or the obsolescence of the equipment to direct a depository institution to reproduce the material. Given that the copyright law gives the author the exclusive right to authorize the reproduction and dissemination of his work, such activities can be performed legally only by the copyright right-holder.⁶⁶ Although the copyright legislation in many countries, Greece among others, provides the right of libraries to reproduce protected works, that have been lost or damaged and are no longer available in the market, no legislation provides permission to make backup copies of all kinds of material deposited in a library. Article 22 of Law 2121/1993 provides an exception to the rule of forbidden reproduction of a work without the written permission granted by the copyright holder,⁶⁷ for the sake of the interests of the general public.⁶⁸ In consideration of the provisions of article 22, reproduction of a copyrighted work is allowed if a) it is made by a non-profit library or archiving organization, b) the work belongs to a copy in the library or archive's permanent collection, c) the reproduction aims at retaining that additional copy or at transferring it to another non-profit library or archive, and d) the reproduction is deemed necessary since it is not possible for the library or archive to obtain an additional copy from the market promptly and on reasonable terms.⁶⁹ Under these exceptional circumstances as they are described in law, reproduction of a copyrighted work is permissible by a DL. The aforementioned circumstances are applicable not only in the case of works of authorship, but also in the case of audiovisual works since the exception to the rule introduced by article 22 applies in the case of related rights *mutatis mutandis*.⁷⁰ In consideration of the provision of article 22 of Law 2121/1993, it goes without saying that said article is a roadblock in the way of the evolution of traditional libraries into DL. Therefore, it is necessary to amend the copyright legislation in order to encompass provisions allowing reproduction of analogue and digital material for preservation and/or for legal deposit purposes.⁷¹

The transposition of Directive 2001/29/EC into the Greek Copyright Law that implemented through Law 3057/2002 which amended Law 2121/1993 did not elaborate upon libraries and archives' right for reproduction of a copyrighted work, but rather it left said issue to be judged through the provisions of article 18 of Law 2121/1993 and the meaning of the three-step-test which is subject to interpretation by the hearing judge of a case submitted to court.⁷² According to many librarians, the legislator's option not to elaborate upon libraries right for reproduction of a copyrighted work in the process of the transposition of Directive 2001/21/EC was a wrong choice and it was severely criticised by the librarian community in Greece which considers that libraries—at least public libraries and non-profit archiving organizations—should have been vested with the exceptional right to reproduce copyrighted works, and thus become easier for them to achieve their statutory goals in respect of Copyright Law.⁷³

And that severe criticism for legislator's option to omit elaborating upon libraries and archives right for reproduction of the works was an outburst of libraries and archives' clamour against Collecting Organizations' practices and pressure for collecting the arbitrarily charged at high rates equitable

⁶⁴ Article 14 of Law 2121/1993.

⁶⁵ Kallinikou, D. *ibid.*, (2008) pp.204-205.

⁶⁶ Kallinikou, D. (2007), *Copyright and Libraries*, pp.66-76, 162-167.

⁶⁷ Article 22 of Law 2121/1993.

⁶⁸ Kotsiris, L. *ibid.*, 2005, pp.224-225.

⁶⁹ Koumantos, G. *ibid.*, 2002, p.294.

⁷⁰ For cinematographic works of special artistic value see the provisions of article 23 of Law 2121/1993 in consideration of Law 1567/1986.

⁷¹ Strakantouna, V. (2007) *Legal deposit of works protected by Copyright*, addressed at international conference titled "Rethinking the boundaries of copyright," Istanbul 15-16 November, 2007.

⁷² It was deemed that the provisions of article 5§2(c) of Directive 2001/29/EC are covered in Law 2121/1993 by article 18.

⁷³ See Hellenic Association of Librarians and Information Scientists, *4th and 5th Declarations of the Hellenic Association of Librarians and Information Scientists*, September 24-26, 2008, available (in Greek only) at URL: <http://library.aua.gr/files/pdf/pshfismata%20teliko.pdf> [last check, April 30, 2009].

remuneration for photocopies of works made through public libraries and in accordance with the provisions of article 18§§3-10 of Law 2121/1993.

Librarians and many others, too, seem to believe that rather than investing money and resources in developing useless and proprietary electronic platforms for the online distribution of works, subsequent right-holders could have opted for the examination and application of the best model for legal reproduction of works through public libraries. There are many European countries which have permitted said reproduction of works. In these European countries wherein public libraries' right for reproduction of works does not conflict with copyright the cost of licensing said reproduction of works is covered either from consumers, e.g. the UK-model for reproduction of works through public libraries, or from the State's Annual Financing Plan, e.g. the Norwegian model for reproduction of works through public libraries. The latter model could have been applied in Greece, too. In addition, subsequent right-holders could have leverage upon the examples of Collecting Societies in French, The Netherlands, or Denmark which have opted for solutions that consider technological evolution, social trends, and the need for legal amendment to adapt to reality, nowadays.

In June 2008, the French music group Petit Homme signed a special contract with SACEM, the French collecting society for music composers, agreeing that musician of Petit Homme could post their work online by excluding Internet protocol, wireless application protocol, and similar protocols from their contract. This agreement excludes SACEM of the group's Internet rights and allows the group the control of their Internet rights while SACEM would handle the remaining rights related to the work of the group.⁷⁴

In August, 2007, Dutch collecting societies BUMA and STEMRA and Creative Commons Netherlands launched a pilot project that seeks to provide Dutch musicians with more opportunities to promote their own repertoire.⁷⁵ This project enables members of BUMA/STEMRA to use the three non-commercial Creative Commons licenses for non-commercial distribution of their works. It also allows Dutch composers and lyricists who already use the Creative Commons non-commercial license to join BUMA/STEMRA and have them collect their royalties for commercial use of their works. The Netherlands is the first country to bring such collaboration between a music copyright organization and Creative Commons, a move applauded by Lawrence Lessig, the founder and chairman of Creative Commons International, as "the first step towards more freedom of choice in the field of exploiting music works in the digital world."⁷⁶

In January 2008, Creative Commons Denmark and KODA, the Danish Authors' Society, reached an agreement in which KODA accepted to offer non-commercial Creative Commons licensing to its members. This agreement allows creators to rely on the strength of collective rights management for commercial uses of their works, while taking non-commercial online distribution into their own hands by using Creative Commons licenses." KODA's adoption of Creative Commons licensing marks a breakthrough for Danish composers and lyricists wanting to explore new ways of making their work available online while at the same time collecting commercial royalties through KODA. Members must sign an agreement with the KODA in which they indicate which works they wish to license, and for the purpose of this arrangement, only Creative Commons licenses with the "non-commercial" condition can be used.⁷⁷

b) The Right to Distribute & the Rental and Lending Right

The right to distribute is a sine-qua-non service of the operation of libraries, moreover of DL. The rental and lending right is also understood as a necessary service in the operation of DL. Yet, despite the fact

⁷⁴ See Saez, C. (2008) Improbable Match: Open Licences And Collecting Societies In Europe, available at URL: <http://www.ip-watch.org/weblog/2008/10/28/french-deal-highlights-open-licensing-and-collecting-societies-in-europe> [last check, April 30, 2009].

⁷⁵ See Creative Commons Netherlands, Buma/Stemra and Creative Commons Netherlands launch a pilot—More opportunities for music authors to promote their own music, Press Release, Amsterdam, August 23, 2007, available at URL: http://www.creativecommons.nl/bumapilot/070823persbericht_en_web.pdf [last check, April 30, 2009].

⁷⁶ See Reeder, M. (2007) Dutch Collecting Societies welcome CC, August 23, 2007, available at URL: <http://creativecommons.org/weblog/entry/7622> [last check, April 30, 2009].

⁷⁷ See Thorne, M. (2008) Danish Collecting Society KODA teams up with CC Denmark, January 31st, 2008, available at URL: <http://creativecommons.org/weblog/entry/8012> [last check, April 30, 2009].

that in many European countries⁷⁸ there have been provisions for the rental and lending right as of the '50s, the Green Paper of 1998 on certain aspects of copyright and related rights in the information society⁷⁹ did not cater for the harmonization of legislation in the EC market of the rental and lending right. It was not until Directives 2001/29/EC and 100/1992/EEC, the latter as it was codified with Directive 2006/115/EC, that the need for harmonization of legislation in the EC market was stressed. The Greek legislation does not make full use of Directive 100/1992/EEC for the public lending right. This option was criticised.⁸⁰ Retrospectively thinking, though, and in consideration of the European Court of Justice (ECJ), the option of the Greek legislator not to make full use of the provisions for the public lending right might not have been so problematic at least in as much as it have been the relevant provisions of other member-States which have tried to do so rather unsuccessfully.⁸¹

c) The Right to communicate the work to the public

According to national and international law, the copyright owner has also the exclusive right to communicate his work to the public. To ensure unobtrusive access to collected cultural material, provisions should be enacted in law, which will allow depository institutions to enable unobtrusive access to works by giving them the rights of public lending online,⁸² digital disposition,⁸³ and creation of multiple copies,⁸⁴ in a way that caters for both the author's copyright as well as a user's right to access information and cultural works. Though access to legal deposits of collections should be free, it should not be unconditional and/or vague in the permitted uses. Traditionally, one of the main reasons for the existence of public libraries is the provision of access to their collections to the public without any financial demand on the part of the author and/or publisher. That is to say, to make the works of culture, arts, and sciences hosted in copies in public libraries available to the public in its quest to access cultural, artistic, and scientific resources.

COPYRIGHT & TECHNOLOGY

Technology was always a big opportunity as well as a danger for copyright. Strengthen the law while holding technology constant and the right is stronger. Proliferate copying technology while holding the

⁷⁸ Denmark was the first country to establish a Public Lending Right system in 1946, followed by Norway in 1947 and Sweden in 1954. For Denmark's Public Lending Right see URL: <http://www.plrinternational.com/established/plradministrators/denmark.htm> [last check, April 30, 2009], for Norway's Public Lending Right see URL: <http://www.plrinternational.com/established/plradministrators/norway.htm> [last check, April 30, 2009], and for Sweden's Public Lending Right see URL: <http://www.plrinternational.com/established/plradministrators/sweden.htm> [last check, April 30, 2009]. See also The Public Lending Right International Network, the list of Public Lending Right by country titled *Established PLR Schemes*, available at URL: <http://www.plrinternational.com/established/Established%20PLR%20Schemes.pdf> [last check, April 30, 2009].

⁷⁹ Opinion of the Economic and Social Committee on the "Proposal for a European Parliament and Council Directive on the harmonization of certain aspects of copyright and related rights in the information society," Official Journal C 407, 28/12/1998 p.0030, available at URL: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:51998AC1122:EN:HTML> [last check, April 30, 2009].

⁸⁰ Papazoglou, V. (2008) Horizontal Action of Academic Libraries: Legal Issues. *Proceedings of the Conference, Archives, Libraries and the Law in the era of Information Society, Athens, February 2-3, 2006*, p.133, and Marinos, M.-T. (1998), Some Notes upon the status of traditional libraries and public digital libraries under the system of Law 2121/1993, *Hellenic Justice Magazine (EiIdik)* p.1484.

⁸¹ ECJ, Oct.26, 2006, JUDGMENT Failure of a Member State to fulfill obligations -Directive 92/100/EEC - Copyright - Rental and lending right - Failure to transpose within the prescribed period, Commission v. Spain, C-36/2005, Collection 2006, p.I-10313, ECJ, Oct.26, 2006, JUDGMENT Failure to fulfill obligations – Directive 92/100/EEC - Rights related to copyright in the field of intellectual property - Public lending right - Failure to transpose within the period prescribed, Commission v. Italy, C-198/2005, Collection 2006, p.I-107, ECJ, Jul.6, 2006, JUDGMENT (EC) Failure of a Member State to fulfill obligations – Directive 92/100/EEC – Copyright – Rental and lending right – Failure to transpose within the prescribed period, Commission v. Portugal, C-53/2005, Collection 2006, p.I-06215, ECJ, Oct.16, 2003, JUDGMENT (EC) Directive 92/100/EEC Copyright. Remuneration of authors in the event of public lending of their literary or artistic works, Commission v. Belgium, C-433/2002, Collection 2003, p.I-12191.

⁸² Kallinikou, D. *ibid.*, (2007), pp.76-88, & the same, *ibid.*, 2008, pp.157-160.

⁸³ Kallinikou, D. *ibid.*, (2007), pp.89-93, & the same, *ibid.*, 2008, pp.161-185.

⁸⁴ Kallinikou, D. *ibid.*, (2008), pp.142-154.

law constant and the right is weaker.⁸⁵ While in the analogue world, life sans copyright law is possible, in the digital world life that does not subject to copyright law is not possible. In the digital world, every single act triggers the law of copyright. The emergence of digital technologies has radically increased the domain of copyright law from regulating a small portion of human life to regulating absolutely every bit of life lived through a computer.

In consideration of the conflicting relationship between Copyright and Technology one wonders upon the essence of the threat that Copyright is met with in the era of digital information technologies and digital libraries which we all have been living in during the last two decades, at least. Is Copyright at stake because of the nature of its conflict to Technology? The answer is definitely No! We are not entering a time when copyright is more threatened than it is in real space. We are instead entering a time when copyright is more effectively protected than at any time since Gutenberg.⁸⁶ The power to regulate access to and use of copyrighted material is about to be perfected.

An important thing about Copyright law is that, though designed in part to protect authors, the control it was designed to create was never to be perfect. Copyright protection has never accorded the copyright owner complete control over all possible uses of his work. Almost since the inception of copyright regulation, there have always been limitations to copyright.⁸⁷ Perfect control is not the control that law has given owners of intellectual property. Historically, the law of Copyright has been focused mainly on commercial life, i.e. it has laid down the rules according to which for profit exploitation of intellectual property is permissible and doable. Most exceptions to the rules for commercial exploitation of intellectual property, namely the restrictions to intellectual property regulation are triggered by the idea of Copyright's commercial use. Most of these restrictions make provisions for permissible non-commercial use of intellectual property in the sense that all other non-commercial uses of intellectual property aside from these provided and allowed by law, are not permissible without the prior consent of the intellectual property right-holder.

This stance of intellectual property law which is a pure depiction of the traditional intellectual property regulation conceived to fit the analogue world seems that it does not fit in the digital world. It does not fit the user-generated creativity that digital technologies have empowered through the Internet. To the extent that people's creativity finds its expression on the Net, it is inevitably subject to the regulation of Copyright law. To the extent peoples' creativity is based upon that of others, peoples' creativity is in the need of the prior permission of others. To the extent it builds upon the creativity of others, it needs to be sure that this creativity can be built upon legally.

We have learnt through the many, lawsuits over the distribution of peer-to-peer (P2P) file-sharing software for .mp3 formatted music that while technology can provide enormous scope for access, unless the law supports such access, it will be unauthorized and could lead to legal liability. The future of the learning process lies in seamless access to educational resources available through (digital) libraries and most of them accessible through Information & Communication Technologies (ICTs) and Internet Protocol (IP) networks. In consideration of the situation nowadays, we understand that while digital libraries deploying ICTs and IP networks inherently produce and communicate copyrighted material in their normal process of operation, they activate the potential for copyright infringement. Therefore, we need to encourage the existing copyright legal framework including laws regulating the operation of digital libraries and legal deposit of works to accommodate the disruptive energies of ICTs & IP networks in a way that promotes openness and open access to educational resources.

⁸⁵ Lessig, L. (1999) Code and Other Laws of Cyberspace, Basic Books pp.124-127, Lessig, L. (2008) Remix—Making art and commerce thrive in the Hybrid Economy, The Penguin Press pp.96-97, 276-277, 289-291, Litman, J.(2006) Digital Copyright, Prometheus Books, pp.35-69, Benkler, Y. (2006) The Wealth of Networks—How Social Production Transforms Markets and Freedom, Yale University Press, pp.273-300, Paul Goldstein, P.(2007) Intellectual Property: The Tough New Realities That Could Make or Break Your Business, Portfolio pp.24, 27-29.

⁸⁶ Lessig, L., *ibid.*, (1999) p.127.

⁸⁷ Lessig, L. *ibid.*, (1999) pp.130-135, Kallinikou, D. *ibid.*, (2008) pp.238-278, Sinodinou, T.-E., (2008) Intellectual Property & New Technologies, Sakkoulas, pp.138-154.

COPYRIGHT & OPENNESS (OPEN ACCESS)

The term Openness (Open Access) was coined to typify the open access to information or material resources needed for projects; openness to contributions from a diverse range of users, producers, contributors, flat hierarchies, and a fluid organisational structure. In the context of Budapest Open Access Initiative,⁸⁸ Open Access means the free availability of literature and works of authorship, audiovisual works etc on the public Internet, permitting any users to read, download, copy, distribute, print, search, or link to the full texts of these articles, crawl them for indexing, pass them as data to software, or use them for any other lawful purpose, without financial, legal, or technical barriers other than those inseparable from gaining access to the Internet itself. The only constraint on reproduction and distribution, and the only role for copyright in this domain, should be to give authors control over the integrity of their work and the right to be properly acknowledged and cited. The Bethesda Statement on Open Access⁸⁹ and the Berlin Declaration on Open Access to Knowledge in the Sciences and Humanities⁹⁰ seem to agree that for a work to be considered for Open Access, the copyright holder must consent in advance to let users copy, use, distribute, transmit and display the work publicly and to make and distribute derivative works, in any digital medium for any responsible purpose, subject to proper attribution of authorship. With Open Access individuals can take projects in their own direction without necessarily hindering the progress of others. Openness is being put forward to facilitate the growth of the open source and free software programming communities, and may involve the consumption and production of free content.⁹¹ The appeal of Openness has become so great that it is sometimes difficult to recognize that limits on Openness are not only necessary but desirable. The virtues of an open environment are undeniable; what is more difficult is negotiating the proper levels of Openness for a given realm of online life.⁹²

The sense for movement of Openness was first understood according to Professor Yochai Benkler, at a conference at Yale University that Professor James Boyle⁹³ organized in April 1999, which was already planned as a movement-building event. That conference, “Private Censorship/Perfect Choice,”⁹⁴ looked at the threats to free speech on the Web and how the public might resist. It took inspiration from John Perry Barlow’s 1996 manifesto “A Declaration of the Independence of Cyberspace.”⁹⁵ The stirrings of a movement were evident in May 2000, when Yochai Benkler convened a small conference of influential intellectual property scholars at New York University Law School on “A Free Information Ecology in the Digital Environment.”⁹⁶ This was followed in November 2001 by a large gathering at Duke Law School, the “Conference on the Public Domain,” the first major conference ever held on the public domain.⁹⁷ It attracted several hundred people and permanently rescued the public domain from the netherworld of “non-property.” People from diverse corners of legal scholarship, activism,

⁸⁸ See The Budapest Open Access Initiative at URL: <http://www.soros.org/openaccess/read.shtml> [last check, April 30, 2009].

⁸⁹ See the Bethesda Statement on Open Access at URL: <http://www.earlham.edu/~peters/fos/bethesda.htm> [last check, April 30, 2009].

⁹⁰ See the Berlin Declaration on Open Access to Knowledge in the Sciences and Humanities at URL: <http://oa.mpg.de/openaccess-berlin/berlindeclaration.html> [last check, April 30, 2009].

⁹¹ See Wikipedia, *Openness*, available at URL: <http://en.wikipedia.org/wiki/Openness> [last check, April 30, 2009].

⁹² Bollier D., (2008) *Viral Spiral: How the Commoners Built a Digital Republic of their Own*, The New York Press pp.40, available at URL: <http://www.viralspiral.cc/download-book> [last check, April 30, 2009].

⁹³ See Boyle, J. *A Politics of Intellectual Property: Environmentalism For the Net?* available at URL: <http://www.law.duke.edu/boylesite/Intprop.htm> [last check, April 30, 2009], was an influential piece that James Boyle wrote in 1997, calling for the equivalent of an environmental movement to protect the openness and freedom of the Internet.

⁹⁴ See Yale Bulletin & Calendar, *Private Censorship and Perfect Choice Conference to explore Speech and Regulation on the Net*, April 5-12, 1999 Volume 27, Number 27 available at URL: <http://www.yale.edu/opa/arc-ybc/v27.n27/story3.html> [last check, April 30, 2009].

⁹⁵ See Barlow, J-P. *A Declaration of the Independence of Cyberspace*, available at URL: <http://homes.eff.org/~barlow/Declaration-Final.html> [last check, April 30, 2009].

⁹⁶ See The Information Law Institute at New York University School of Law supported by Arthur S. & Marilyn Penn Foundation, *Conference A Free Information Ecology in the Digital Environment*, available at URL: <http://www1.law.nyu.edu/ili/conferences/freeinfo2000/aboutconf/index.html> [last check, April 30, 2009].

⁹⁷ See Duke Law School supported by the Center for the Public Domain, *Conference on the Public Domain*, November 9—11, 2001, available at URL: <http://www.law.duke.edu/pd> [last check, April 30, 2009].

journalism, and philanthropy found each other and began to re-envision their work in a larger, shared framework.⁹⁸

The Open Access movement cropped up as a reaction of academia in the increasingly rising pricing of scientific publications and subscriptions controlled by publishers and distributors that intervene in the process of scientific knowledge dissemination and stifle competition in scientific publishing and distribution.⁹⁹ By the time¹⁰⁰ Open Access started to be a central point of discussion in the agenda of academic institutions, prices had risen many times faster than inflation since 1986.¹⁰¹ Fortuitously, just as journal prices were becoming unbearable, the Internet emerged to offer an alternative. The Internet has played a catalytic role in the evolution of the Open Access movement because of the radical changes it has imposed in the process of authoring, publishing, distributing, and pricing content via the Internet networked public sphere. The evolution of the Web into Web 2.0 has enabled more interaction and participation among users and empowered them to undertake action both as readers and authors, publishers and distributors, in the process of production and consumption of knowledge. Since the beginning of the Internet era, openness of scientific knowledge, art, and culture has been fostered and cultivated in way that indicates that openness is somewhat intrinsically connected to the hierarchical anarchy of the Net. While Open Access was born because of the need to remove price barriers (subscriptions, licensing fees, pay-per-view fees), it was soon realized that its survivability was subject to the need to remove permission barriers as well (most copyright and licensing restrictions).

The Internet and the Open Access movement has inevitably altered the way in which librarians see their own profession, and their role in saving, archiving, and distributing knowledge, art, and culture to the general public. Because of the nature of their profession, librarians, even those working for for-profit organizations and/or private libraries and archives, are prone to adopt solutions that remove both price and permission barriers in order to keep the knowledge commons open to the general public. After all, the general public is their most important clientele. The general public is the most important stakeholder of any public and/or private library. Librarians, and especially the younger generations of them who have had the opportunity through their undergraduate and graduate studies in academic institutions to get a grasp of what a DL might be and/or could evolve to become, usually strive to develop strategies favouring the outcomes best corresponding to the deepest values of their profession, in particular the desire to overcome barriers in the open access of knowledge, art, and culture saved, archived, and distributed through libraries. From that perspective, it is clear and reasonable that librarians throw all of their weight to the Open Access movement for the following reasons.¹⁰²

1. It is the only alternative to present publishing that has a chance to develop without the economic penalties associated with present, digital publications peddled in the form of site licenses.
2. It is the only alternative that, although relying on some external, public support, has a chance to withstand the competition of the large publishers over the middle and long term, unlike most learned societies and similar, generally irreproachable, institutions.
3. It is the only way for librarians to recover responsibility over traditional concerns such as classification and conservation. In this manner, they can also get involved with the elaboration of various tools that add values to any collection of scientific articles (what Professor Jean-Claude Guédon calls “epistemological engineering”).

⁹⁸ Bollier D., *ibid.*, (2008), p.67.

⁹⁹ See Lessig, L. *Answers to Written Questions. The Senate Judiciary Committee, “The Microsoft Settlement: A Look to the Future”*, available at URL: <http://www.lessig.org/content/testimony/answers.doc> [last check, April 30, 2009].

¹⁰⁰ See Suber, P. *Timeline of the Open Access Movement*, revised February 9, 2009, available at URL: <http://www.earlham.edu/~peters/fos/timeline.htm> [last check, April 30, 2009].

¹⁰¹ See Peter Suber, *Open Access Overview, Focusing on open access to peer-reviewed research articles and their preprints*, revised June 19, 2007, available at URL: <http://www.earlham.edu/~peters/fos/overview.htm> [last check, April 30, 2009]. See also Kyriolidou, M. and Young, M, *ARL Statistics 2001-2002*, Association of Research Libraries, available at URL: <http://www.arl.org/bm~doc/arlstat02.pdf> [last check, April 30, 2009], the same, *ARL Statistics 2002-03*, Association of Research Libraries, available at URL: <http://www.arl.org/bm~doc/arlstat03.pdf> [last check, April 30, 2009], the same, *ARL Statistics 2004-05*, Association of Research Libraries, available at URL: <http://www.arl.org/bm~doc/arlstat05.pdf> [last check, April 30, 2009].

¹⁰² See Guédon, J-C. (2001), *In Oldenburg's Long Shadow: Librarians, Research Scientists, Publishers, and the Control of Scientific Publishing*, Association of Research Libraries 2001, available at URL: <http://www.arl.org/resources/pubs/mmproceedings/138guedon.shtml> [last check, April 30, 2009].

4. It is the only way to ensure that powerful panoptic effects, either already identified or to be discovered, do not remain the exclusive preserve of private, unaccountable, profit-driven companies, many of them operating offshore.
5. Open libraries and archives provide a very good way to develop new and positive relationships with scientists, particularly gatekeepers, and administrators to review in depth the processes of scientists' evaluation now that these questions can be treated independently of print-related constraints.

A closer look at Openness in Greece reveals that though there is a diverse set of sources of openness, yet very few of these are legal. Mostly, they are based on technological and social practices, including resistance to legal and regulatory drives toward enclosure. For the most part, the drive for openness is based on individual and voluntary cooperative action, not law. The social practices of openness take on a quasi-normative face when practiced in standard-setting bodies.¹⁰³ While very few of them exist, currently in Greece, some of them are very characteristic and a source of hope for the sincere consideration and support of Openness in Greece in the foresighted future. The National Hellenic Research Foundation¹⁰⁴ in Greece, though not the first scientific institution to consider Openness, yet it's probably the most pronounced proponent of Openness and its meaning in academic development and innovation in the country. There are also a few examples of academic repositories and DL in Greece.¹⁰⁵ These include NEMERTES which is the institutional repository of the University of Patras that aims to accommodate all the intellectual work produced by the academic and research staff,¹⁰⁶ PSEPHEDA which is the academic digital repository of the University of Macedonia,¹⁰⁷ ANEMI which is a DL founded by the University of Crete's Library with the aim to provide simple and quick access to a rich collection of digitized material related to modern Greek studies,¹⁰⁸ PERGAMOS, an integrated DL system that offers a platform for the perseverance, documentation, cataloguing, management and prominence of various and heterogeneous digital collections of the National and Kapodistrian University of Athens,¹⁰⁹ DSPACE, which is the DL of the University of Piraeus,¹¹⁰ PANDEMOS, the DL of the Panteion University,¹¹¹ EUREKA! which is the open access institutional repository of ATEI of Thessaloniki,¹¹² E-LOCUS, the institutional repository of the University of Crete's library,¹¹³

¹⁰³ Benkler, Y. *ibid.*, (2006) p.394 reports a couple of pronounced examples in the US, such as Internet Engineering Task Force (IETF) or the World Wide Web Consortium (W3C).

¹⁰⁴ See the National Hellenic Research Foundation (NHRF) in Greece at URL: <http://www.eie.gr/index-en.html> [last check, April 30, 2009]. Currently NHRF issues a number of academic peer-reviewed open access journals such as BYZANTINA SYMMEIKTA through NHRF's Institute for Byzantine Research; see BYZANTINA SYMMEIKTA at URL: <http://www.byzsym.org/index.php/bz> [last check, April 30, 2009], and the HISTORICAL REVIEW, a peer-reviewed open access journal issued by NHRF's Institute for Neohellenic Research; see HISTORICAL REVIEW at URL: <http://www.historicalreview.org/index.php/historicalreview> [last check, April 30, 2009]. Also, NHRF's Open Access—Knowledge for All site at URL: http://www.openaccess.gr/?language_id=1 [last check, April 30, 2009] which is an online platform providing updated and comprehensive information on Open access issues and latest trends in Greece and elsewhere, Open access infrastructure currently being developed by the National Documentation Centre (EKT) which is part of NHRF. It also links to NHRF's Open Access libraries and repositories such as HELIOS repository at URL: <http://helios-eie.ekt.gr/EIE> [last check, April 30, 2009] still operating in a Beta version, PANDEKTIS digital thesaurus of primary sources for Greek history and culture at URL: <http://pandektis.ekt.gr/dspace> [last check, April 30, 2009], the HELLENIC PH.D. DISSERTATION THESIS database at URL: <http://argo.ekt.gr/opac2/zConnectENU.html> [last check, April 30, 2009]. This database consists of the national archive of the Hellenic Dissertations. It includes elements for dissertations that have been written in Greek universities as well as for dissertations written abroad by Greek Doctors. The database consists of the 80% of the total dissertation production in Greece; it includes the dissertations since 1985 until today, as well as a proportion of 5% of the dissertations from 1932 until 1985.

¹⁰⁵ Ten out of twenty three Greek academic institutions and four out of sixteen technological educational institutions have developed digital collections and repositories aiming at Greek digital Grey Literature. See Nikolaidou, M. *Digital Repositories: The Greek Reality*, International Conference Open Access Infrastructures: The Future of Scientific Communication, Hellenic National Research Foundation & National Documentation Centre, 2009, available at URL: <http://www.openaccess.gr/dotAsset/13728.pdf> [last check, April 10, 2009].

¹⁰⁶ See Nemertes at URL: <http://nemertes.lis.upatras.gr/dspace/?locale=en> [last check, April 30, 2009].

¹⁰⁷ See Psepheda at URL: <http://dspace.lib.uom.gr> [last check, April 30, 2009].

¹⁰⁸ See Anemi at URL: <http://anemi.lib.uoc.gr> [last check, April 30, 2009].

¹⁰⁹ See Pergamos at URL: <http://pergamos.lib.uoa.gr/dl/index> [last check, April 30, 2009].

¹¹⁰ See DSpace (in Greek only) at URL: <http://digilib.lib.unipi.gr/dspace> [last check, April 30, 2009].

¹¹¹ See Pandemos (in Greek only) at URL: <http://library.panteion.gr:8080/dspace> [last check, April 30, 2009].

¹¹² See Eureka! at URL: <http://eureka.lib.teithe.gr:8080/dspace> [last check, April 30, 2009].

¹¹³ See E-Locus at URL: <http://elocus.lib.uoc.gr> [last check, April 30, 2009].

@NAKTISIS, the DL of the TEI of Western Macedonia,¹¹⁴ ESTIA which is the digital repository of the Harokopio University,¹¹⁵ and THEOFRASTOS, which is the DL of the School of Geology of Aristotle University of Thessaloniki.¹¹⁶ However, none of these few examples of institutional repositories and academic DL have the force of law. Last, but not least, one cannot miss to report regarding Openness in Greece that fact that there is one political party, namely the main opposition Panhellenic Socialist Movement (PASOK) party in Greece which has set all sites and communication elements of it under the Creative Commons licensing.¹¹⁷ The fact that PASOK has opted for Creative Commons licensing for its political communications is indicative of its orientation towards Openness, and is encouraging for further development both in political and legal frameworks in Greece that could enhance and multiply the Open Access initiatives in the country.¹¹⁸ Most legal devices that support Openness in Greece are used voluntarily like the GRL and LGPL free software licensing and the Creative Commons licensing.

While “open” means “without cost”, it does not follow that it also means “without conditions.” This conditional use of educational resources available in an information commons is a distinctive characteristic of Open Educational Resources and could best be served through the Creative Commons licenses.¹¹⁹ The term Open Educational Resources which first came into use at a conference hosted by UNESCO in 2002, is used to describe the open provision of educational resources in the form of digitized materials, offered freely and openly for educators, students, and self-learners to use and reuse for teaching, learning, and research, which are accessible mainly through ICTs and IP networks and are available for consultation, use and adaptation by a community of users for non-commercial purposes.

Thus, the meaning of Open Educational Resources includes:¹²⁰

1. Learning content such as full courses, courseware packs, content modules, collections, journals etc.
2. Tools such as software to support the development, use and reuse, delivery of content, searching mechanisms for locating content, learning management systems, content development tools, communities for content aggregation etc.
3. Implementation resources such as the Creative Commons licenses which promote open publishing of materials, design principles and policies that mandate the provisions upon which content is accessible and available for use, reuse, adaptation etc.

Openness is about the right and the ability to modify, repackage, and add value to a resource.¹²¹ This kind of openness blurs the traditional distinction between the consumer and the producer of resources. The term “user-producer” is sometimes used to highlight this blurring of roles. In that sense, Openness should leverage upon Open Educational tools that make possible the following three freedoms:

1. The freedom to study a work and apply knowledge offered from it.
2. The freedom to redistribute copies, in whole or in part, of a work.
3. The freedom to make improvements or other changes, i.e. to make adaptations, to the content of a work, and the freedom to release modified copies of it.

Open Educational Resources do not occur just because of the fact that the implementation resources such as the Creative Commons licenses are at hand. Targeting mainly academic institutions in Greece and in consideration of the potential by leveraging upon implementation resources such as the Creative Commons licenses, our recommendations for the development of Open Educational Resources in conjunction with the Creative Commons licenses include the following:

¹¹⁴ See @naktisis at URL: <http://eprints.teiko.gr> [last check, April 30, 2009].

¹¹⁵ See Estia (in Greek only) at URL: <http://195.251.30.202:8080/dspace> [last check, April 30, 2009].

¹¹⁶ See Theophrastos at URL: <http://geolib.geo.auth.gr/digeo> [last check, April 30, 2009].

¹¹⁷ See the Panhellenic Socialist Movement (PASOK) portal at URL: <http://www.pasok.gr/portal> [last check, April 30, 2009].

¹¹⁸ PASOK’s option to leverage upon the openness momentum of Creative Commons licensing resembles President Elect Barack Obama’s option to set his political communication during the U.S. Presidency campaign under the Creative Commons licensing indicating his favorable stance towards open access; see more on Barack Obama’s CHANGE.GOV copyright policy at URL: http://change.gov/about/copyright_policy [last check, April 30, 2009]. It remains to be seen whether pre-election option will elevate into formal policy and/or legal framework favouring Openness.

¹¹⁹ Organisation for Economic Cooperation & Development, *Giving Knowledge for Free: The Emergence of Open Educational Resources*, 2007, p.34, available at URL: http://www.oecd.org/document/41/0,3343,en_2649_35845581_38659497_1_1_1_1.00.html [last check, April 30, 2009].

¹²⁰ Organisation for Economic Cooperation & Development, *ibid.*, 2007, pp.35-36.

¹²¹ Organisation for Economic Cooperation & Development, *ibid.*, 2007, pp.32-36.

1. Each institution and especially public libraries and depositories funded by the Government should develop and publish its policy on open access, clearly declaring its objectives and interests in providing materials by this means. Template guidelines and model documents should be developed to assist institutions practically in the establishment and management of open access systems, and should include:
 - a. Guidance on the development of institutional open access policies, outlining different models of open access and providing means for determining and reviewing the categories of materials which are to be made available by open access and the scope of open access which is to be afforded, in terms of classes of persons who are to be allowed access and the external rights granted to access and reuse of the materials.
 - b. Examples of model institutional open access policies accompanied by explanatory statements of each open access policy.
 - c. Guidance on matters to be considered by formally allocating responsibility to an appropriate office within the institution's governance structure, in order to ensure appropriate ongoing administration of the open access policy.
 - d. Guidance on the operation of copyright and contract in structuring an open access system.
2. In order to ascertain who is permitted to use academic materials deposited in a repository and the extent of the permitted use of such materials, it is necessary to identify the various stakeholders and their respective roles, describe the legal relationships among them, and understand how copyright interests are allocated among them and how the Creative Commons licenses can serve such an allocation.
3. Each institution must address conjointly and make decisions about the following factors for the sustainability of Open Educational Resources projects:
 - a. The size, structure, and degree of centralization of the organization which will implement an Open Educational Resources project.
 - b. The types of resources it will offer and the media formats in which these resources will be shared.
 - c. The types of the end user reuse that is most likely to help the project meet its goals.
 - d. Incentives for engaging as many participants as possible.
 - e. Ways to reduce costs while still meeting the Open Educational Resources goals.
 - f. Choose among the many available funding models the one which is most likely to result in levels of funding sufficient to allow the Open Educational Resources project to survive.

Strategic planning and implementation for the creation of Open Access libraries and depositories requires thorough studying of all the aforementioned issues—probably more than these mentioned hereto—while at the same time emphasis should be placed on understanding the perceptions upon Openness in the public. Keeping an inquisitive eye locally, should not distract attention from the environmentalism of Openness and the examples of best practices for depositories and libraries worldwide, and especially notable examples of DL and/or Open Access Journals that leverage upon openness-enhancing legal tools such as the Creative Commons licences in their strategically important choice to Open Access. In the field of Law studies, there are already twenty-one law reviews which have adopted the Open Access Principles, or have policies that are consistent with them. Leading journals such as *Animal Law*, *Harvard Journal of Law & Technology*, *Indiana LawJournal*, *Lewis & Clark Law Review*, *Michigan Law Review*, *Michigan State Law Review*, *New York Law School Law Review*, *Texas Law Review*, *Vanderbilt Law Review*, and *Wayne Law Review* have signed on, as have all of the journals published by Duke Law School and Villanova Law School.¹²²

In Europe, there are also notable examples of Open Access Law Journals such as *Ancilla Juris* in Switzerland,¹²³ *IDP* of the Universitat Oberta de Catalunya in Spain,¹²⁴ the *Journal of International*

¹²² Raul, (2005) *Creative Commons and Science Commons Announce Open Access Law Program*, Creative Commons, Press Release June 6, available at URL: <http://creativecommons.org/press-releases/entry/5464> [last check, April 30, 2009]. About the Open Access Law Program see Science Commons, *The Open Access Law Program, a part of the Science Commons publishing project, supports "open access" to legal scholarship*, available at URL: <http://sciencecommons.org/projects/publishing/oalaw> [last check, April 30, 2009].

¹²³ *Ancilla Juris* leverages upon Creative Commons licensing. See *Ancilla Juris* at URL: <http://www.anci.ch> [last check, April 30, 2009].

Commercial Law and Technology (JICLT) of the International Association of IT Lawyers in Denmark,¹²⁵ the Utrecht Law Review (ULR) of the Universiteit Utrecht in the Netherlands,¹²⁶ which all leverage upon the Creative Commons licensing and in most cases the BY-NC-ND license (Attribution+NonCommerical+NoDerivatives). There are also other notable examples of European Open Access Law Journals such as the Electronic Journal of Comparative Law (EJCL) of Tilburg University Schoordijk Institute in the Netherlands,¹²⁷ the Erasmus Law and Economics Review (ELER) in Italy,¹²⁸ the InDret Review on the Analysis of Law of the Universitat Pompeu Fabra in Spain,¹²⁹ the International Journal of Communications Law and Policy of the Centre for Socio-Legal Studies (IJCLP) at Oxford University in the U.K.,¹³⁰ the Journal of Academic Legal Studies (JOALS) of the University of Hannover in Germany,¹³¹ the Juridica International of the University of Tartu in Estonia,¹³² the Lex et Scientia of the Universitatea Nicolae Titulescu in Romania,¹³³ the Papers Lextra of the Institut Joan Lluís Vives in Spain,¹³⁴ the Review of Economic Research on Copyright Issues (SERCI) in Spain,¹³⁵ the Rivista di Criminologia, Vittimologia e Sicurezza in Italy,¹³⁶ the SCRIPT-ed of the Research Centre for Studies in Intellectual Property and Technology Law in the U.K.,¹³⁷ to name a few. Unfortunately, there is no analogous example of an Open Access Law journal in Greece, currently.¹³⁸ To the point that we are aware of, though, there is only a digitized collection of materials referring to Civil Law, namely all the dissertations submitted by graduate students in Athens Law School's Graduate Studies in Civil Law program, that is available through the Athens Law School Library of the National and Kapodistrian University of Athens.¹³⁹

¹²⁴ IDP leverages upon Creative Commons licensing. See IDP at URL: <http://www.uoc.edu/idp/7/cat/index.html> [last check, April 30, 2009].

¹²⁵ JICLT leverages upon Creative Commons licensing. See JICLT at URL: <http://www.jiclt.com/index.php/JICLT> [last check, April 30, 2009].

¹²⁶ ULR leverages upon Creative Commons licensing. See ULR at URL: <http://www.utrechtlawreview.org/index.html> [last check, April 30, 2009].

¹²⁷ See EJCL at URL: <http://www.ejcl.org> [last check, April 30, 2009].

¹²⁸ See ELER at URL: <http://www.eler.org/index.php> [last check, April 30, 2009].

¹²⁹ See InDret at URL: <http://www.indret.com> [last check, April 30, 2009].

¹³⁰ See IJCLP at URL: <http://www.ijclp.net> [last check, April 30, 2009].

¹³¹ See JOALS at URL: <http://www.joals.org> [last check, April 30, 2009].

¹³² See Juridica International at URL: http://www.juridica.ee/international_en.php?submit_year=1&selected_year=default [last check, April 30, 2009].

¹³³ See Lex et Scientia at URL: <http://lexetscientia.univnt.ro/?lang=en> [last check, April 30, 2009].

¹³⁴ See Papers Lextra at URL: <http://www.lextra.uji.es/papers> [last check, April 30, 2009].

¹³⁵ See SERCI at URL: <http://www.serci.org/default.asp> [last check, April 30, 2009].

¹³⁶ See Rivista di Criminologia, Vittimologia e Sicurezza at URL: <http://www.vittimologia.it/rivista> [last check, April 30, 2009].

¹³⁷ See SCRIPT-ed at URL: <http://www.law.ed.ac.uk/ahrc/script-ed> [last check, April 30, 2009].

¹³⁸ See The Directory of Open Access Journals at URL: <http://www.doaj.org> [last check, April 30, 2009], in which there is no entry for Greece.

¹³⁹ See Athens Law School Library of the National and Kapodistrian University of Athens (in Greek only) at URL: <http://www.lib.uoa.gr> [last check, April 30, 2009].

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BIOGRAPHY

Dionysia Kallinikou

She is Associate Professor of Law in Athens Law School at the National and Kapodistrian University of Greece, and an Attorney-at-Law. She has established a reputation as an Intellectual Property expert, and authored many books and scientific articles upon Intellectual Property. She served as the Director of Intellectual Property Organization in Greece, and as a Project Leader in European Community programs related to a variety of Intellectual Property issues.

Marinos Papadopoulos

He is an Attorney-at-Law registered in Athens, Greece. He holds a law degree from Athens Law School and a graduate degree Master of Science from Boston and Harvard Universities. He has, also, graduate studies at Stanford University upon Information Technology and Law as well as The George Washington University upon Management. He is an active participant in international fora upon issues of Information Technology & Law as well as Information Society. He is a Legal Lead for Creative Commons in Greece. (Further info at URL: <http://www.marinos.com.gr>)

Alexandra Kaponi

She is an Attorney-at-Law registered in Athens, Greece. She holds a law degree from Athens Law School and a graduate degree Legum Magister from Heidelberg University. She is a Judge-Arbitrator of the European Arbitration Court on .eu domain names, and an Attorney-at-Law working for the National Telecommunications & Post Commission in Greece on .gr domain names. She is an active participant in international fora upon issues of Information Technology & Law as well as Information Society. (Further info at URL: <http://www.marinos.com.gr>)

Vassiliki Strakantouna

She is a Librarian at the Civil Law School Library of the National & Kapodistrian University of Athens. She holds a degree on Psychology from the Department of Psychology, Faculty of Philosophy, Pedagogy & Psychology of the National and Kapodistrian University of Athens, and a graduate degree Master of Information Science from the Ionian University, Department of Archives & Library Science. She holds also a degree on Drama (School of Drama 'Eugene Hatzikou') and a degree on Administration & Economics (Technological Education Institute of Athens, Department of Library Studies). She is an active participant in Pan-Hellenic fora upon issues of Libraries & Information Society.