



**SECOND STATEMENT FROM
LIBRARY COPYRIGHT ALLIANCE
WIPO COMMITTEE ON DEVELOPMENT AND INTELLECTUAL PROPERTY
SEVENTH SESSION
GENEVA, 2-6 MAY 2011**

Thank you, Mr. Chairman. On behalf of the Library Copyright Alliance, I would like to commend the excellent *Scoping Study on Copyright and Related Rights and the Public Domain* produced by Professor Séverine Dusollier [CDIP/7/INF/2].

We believe that the study structures and clarifies concepts in an extremely helpful way. We agree with Member States who have suggested that follow-up on the study is necessary in order to realize many of the useful ideas and recommendations, and we hope that follow-up will begin immediately.

We appreciate Professor Dusollier's recommendations related to maintaining the non-exclusivity and non-rivalry of the public domain (p. 71). We agree that anti-circumvention provisions of the 1996 WIPO Treaties need to be revisited and amended, because "[t]here is no legal basis for the enforcement of technological protection measures applied to the public domain" (p. 71). The fact is that technological protection measures involve two added layers of protection to works: added to copyright is technological protection, and through the 1996 WIPO Treaties is added protection of the technological protection measures. This appears to contradict the original intention of the copyright system to allow for a public domain to exist and not be interfered with.

On the issue of technological restraints applying to the public domain by virtue of the presence of copyrighted elements in republished works (p. 45), we think that this problem is not at all theoretical. It is very real, as a standard practice of content industries, and that it should not be encouraged by anti-circumvention provisions that too often restrict use of public domain works in the digital environment.

We appreciate the recommendation that Berne members "recognize the public domain status defined by other countries and prevent privatization of what is in the public domain elsewhere" (p. 71).

We believe that "[l]egal means should be found to prevent the recapture of exclusivity in works that have fallen into the public domain" (p. 71).

We believe that it is in the power of Member States to protect the public domain on a national level, and encourage Member States not to adopt international norms that unduly restrict the information flow of public domain works.

Finally we agree that the study needs to be integrated into the work of the SCCR, in particular concerning possible solutions to identifying orphan works, one of the major challenges in copyright today from standpoint of libraries as they embark on digitization efforts.

Thank you again, Mr. Chairman, for allowing us to present our comments at this meeting.

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