

## Open Access versus Copyright Legal Issues and the Norwegian Ask the Library Service (Biblioteksvar.no)

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### Abstract

The paper discusses the copyright issues in the Norwegian ATL service, and looks at ways to circumvent the legal pitfalls. The similar services in Denmark (*Biblioteksvagten*) and Sweden (*Fråga biblioteket*) are compared. The significance of the ambitious digitization program of The National Library of Norway is considered. Professional librarians working in the service have been interviewed and different approaches to legal questions in the Scandinavian countries are discussed. The complexity of legal issues in the Scandinavian ATL services is not widely recognized and the literature on the topic is sparse.

### Introduction

As reference tools and other information sources become digital and electronically available, the easier it is for reference librarians to supply the patrons with answers and links from copyright protected material in violation of author's rights. New technologies for storage and electronic retrieval, copying and distribution have created a new situation for the traditional reference services.

The rules of copying are stricter for digital than for printed material. Basically it is illegal to copy (cut and paste) from reference works, encyclopaedias, dictionaries and databases, even though the library has licence to use the material.

With the coming of the digital age the libraries, in general, no longer *own* their online electronic reference resources. What they pay for is *access*, i. e. to databases, created by others.

According to the Norwegian Copyright Act there is, in principle, no difference between printed and electronic material, but when it comes to use, there is a huge difference. Because electronic reference tools can be accessed from anywhere there is a need for protecting publishers' and authors' exclusive right to reproduction and distribution of their intellectual and creative work as stated in *The Copyright Directive* from EC (Directive 2001/29/EC).

These exclusive rights may conflict with the Norwegian Library Act §1:

*The task of the public libraries shall be to promote enlightenment, education and other cultural activities by the dissemination of information and by making books and other suitable material available free of charge to all those who live in Norway.*

The term *free of charge* is crucial as it belongs to the core values and interests of the Norwegian public library. To *balance* these conflicting interests is the main challenge to the library sector and the organizations representing the copyright holders. So there is a need for cooperation, which has resulted in establishing committees to work out fair and reasonable agreements.

The Norwegian libraries are bound by laws and legal regulations, the most important being the Norwegian Library Act. The use and distribution of the libraries' material i. e. books, magazines, videos, photos, music etc. are restricted by the Norwegian Copyright Act. The increased possibilities for electronic storage, distribution, downloading and copying of protected material make it necessary to put copyright questions high on the agenda of digital reference services in Norway.

### **Fundamentals of copyright**

Generally in copyright law, there are two basic rights belonging to the copyright holder: the right to *reproduce* an intellectual, artistic or scientific work and the right to make it *accessible* to the public. These are the core ideas of copyright.

Because anyone can publish anything on the Internet, librarians, working in the ATL services, are at risk to make material accessible, in violation of the copyright holders' rights, through links answering questions from patrons.

### **Legal issues in Biblioteksvar.no**

The Norwegian Ask the Library service *Biblioteksvar.no* is a nationwide service where 50 libraries and more than 200 librarians cooperate to give answers to questions on e-mail, chat and SMS, mostly to school children in the primary and secondary school doing assignments and home work. Statistics from 2005 show that 55 % of the questions were answered by means of the Internet and the rest from the libraries' printed collections (Bibliotekreform 2014 2006). The service is part of the *Norwegian Digital Library* which is controlled by the *Norwegian Archive, Library and Museum Authority (ABM-utvikling)*. An operational contract has been signed with *Oslo Public Library (Deichmanske bibliotek)*, running from 2006 to 2010, which makes long term planning and development possible. (Hagen 2007)

The most interesting part of the *Biblioteksvar.no* concerning copyright questions is perhaps the chat-service. Here the reference librarians work under stress to find good answers in a short time. Questions are answered with links to relevant pages, factual information or reference to where the patrons may find the answers. The perils of transmitting copyright protected material is much greater in this service than in the e-mail service, where the librarians have more time, and where they can refer to printed material in the library, as well as links (Biblioteksvar 2006).

*Biblioteksvar.no* has established an internal discussion group to secure the quality of the answers and critically evaluate the sources of information. This forum has its own mailing list where copyright questions are frequently discussed. A recurring problem, much debated among the members of the forum, has been the copying and pasting of texts which are protected by copyright law, for instance full-text articles from the *Store Norske Leksikon* (Great Norwegian Encyclopedia), which is currently the most comprehensive contemporary Norwegian language encyclopedia. In addition there have been examples of illegal conveying of poems and lyrics.

In October 2007 *The Norwegian Archive, Library and Museum Authority (ABM-utvikling)* negotiated a written contract with *Store Norske Leksikon*, which allowed *Biblioteksvar.no* to forward articles through the e-mail button. It is also permitted the use of article excerpts in the answers as long as the source is clearly stated. Then this particular problem should be solved.

A major legal problem in the service is the conveying of links, that makes it is difficult to determine whether the information behind the links is protected by copyright law or not. How can the reference librarians decide, in a matter of minutes, whether the information they supply is in the public domain?

In order to decide what is legal and what are copyright violations in *Biblioteksvar.no*, it is necessary to take a closer look at the established guidelines of the service, especially in relation to the Norwegian Copyright Act.

### **Copyright guidelines in Biblioteksvar.no**

In the autumn of 2006 *Biblioteksvar.no* published a small booklet with guidelines for the service (Brukermanual 2006). In a separate chapter (5) the question of copyright is covered.

The guidelines have been worked out over a long period of time based on practical experiences in the service and the discussions in the quality group. The topic of copyright has been on the agenda of seminars and meetings. In 2004 *Biblioteksvar.no* held a seminar for the librarians working in the service and invited the legal advisor of the Norwegian National Library to lecture on the subject. The lecture was important in helping to increase the awareness of copyright questions and to work out guidelines.

The guidelines can be summarized as follows: The main rule is not to copy and paste electronic texts into the answer. There are however some important exceptions:

- If the copyright holder has given permission to use the material. This is sometimes stated on the web page. Otherwise consent can be obtained by direct request.
- Copyright lasts for a defined period of time i. e. 70 years after the author's death. The work then enters the public domain and can be used freely.
- Internet sites from the Open access archives which provide scientific and scholarly material can be used for free. Many web pages operate under Creative commons licenses to avoid or limit copyright laws. *Wikipedia* articles can be copied freely as long as one cites the source.
- Government publications, official documents from local authorities, laws and court decisions etc. are in the public domain and not covered by the copyright law.
- Works that are below a certain level of originality for example catalogues, forms or tables are outside copyright law. Intellectual ownership basically concerns original literary, scientific, dramatic and musical works.

Another exception, not mentioned in the guidelines, is the right to quote from copyrighted works in order to comment upon it or criticize it, as long as the source is mentioned. The quantity may be disputed, but the purpose of the quotation will decide if this is allowed.

The librarians working in the service can also formulate answers with their own words thus avoiding the legal pitfalls.

So instead of copying texts into the answers the librarians are recommended to send links containing the answer. Finding and conveying links therefore constitute a major part of the activities in the Norwegian ATL service.

### **Copyright and the ATL services in Denmark (Biblioteksvagten) and Sweden (Fråga biblioteket)**

The Danish service also has guidelines concerning copyright, with emphasis on licence agreements. The electronic resources can only be made accessible in closed networks to well defined user groups. The licences are intended for teaching and instruction and cannot be used for resale. That means the libraries must comply with specific regulations, set out by the vendors. For instance, it is not allowed to download articles from full text databases and send them as attachments to the patrons. If the user belongs to an educational institution, and can be identified as such, through password or network (vpn), access will be activated. Neither is it permissible to download bibliographic files from pay databases for resale to companies. Short bibliographic information can be electronically transmitted. To find out what is allowed, one must consult the terms of contract for each database.

The Swedish ATL service has an internal blog where a note on copyright is found. The Swedish service lists 13 database suppliers, with whom they have a licence to send content to patrons. It is strongly emphasized that information on source must accompany the electronically transmitted material.

Upon contact with the Danish and the Swedish ATL service, neither of them could report of violations on copyright. According to them it did not represent a problem. So we can conclude that the guiding principle for all three Scandinavian ATL services, is to be cautious and use ones common sense and read the contract terms closely.

### **Problems with the use of links in the ATL service**

First of all, is this a problem? Can't we make links to everything we find on the Internet without violating copyright regulations? Is it not reasonable to presume that people who publish their works on the Internet want their sites to be found and used? If they want to protect them from spiders, why don't they include a robots.txt file?

When we supply the patron with a link, we only tell where information can be found. In legal terms it is a *reference* to information and not a reproduction or public display of a work. The World Wide Web is a digital network that is based on links. The technology behind it is the Hypertext Transfer Protocol (HTTP). Links are a way to present and structure information in this digital network and without them the WWW could not exist.

There is nothing in the Norwegian Copyright Act which prohibits links to creative works on the Internet, on condition that the author has placed it there, or given permission to so. The problem arises with material which is illegally placed on the Internet. Is it a violation to create links to those files, for instance mp3 files? In a much controversial case, the *Napster.no* case, The Supreme Court of Norway ordered a Norwegian computer engineer to pay NOK 100.000 to the music industry in Norway. His site did not contain any music files but provided links to files on other servers.

The principal point in the Supreme Court ruling is that it is not in itself illegal to link to other sites, which is what the music industry claimed. A lower court found him guilty of violation of copyright law, but the Court of Appeal cleared him, arguing that others, and not he, had

illegally posted the music. The links to unlawfully downloaded mp3-files were not considered as an act of making available the copyright work to the public. The links were considered to be mere references to the work. However the Supreme Court stated that it is a violation of copyright to make illegally posted files accessible on the Internet, and so upheld the ruling of the lower court.

Another interesting case concerning links is the case of *Google News versus Belgian newspapers*, where the newspaper owners successfully sued Google for linking up to newspaper headlines, photos and text. When Google News Norway was launched publishers and owners were upset about Google placing copyrighted images on the site without proper agreement and in violation of copyright law, so Google had to remove them.

In connection with Google's ambitious digitization program, Google Book Search, the company faces serious copyright questions. Google scans millions of books, in partnership with large public and university libraries in the US and elsewhere, and in many cases without the permission of the publishers and copyright owners.

How can the librarians working in the ATL service know if the books are scanned without authorization? And is it permissible to send the patrons links to them? If they do so, they unwittingly violate copyright by making books accessible. There is no easy answer to this problem.

*The National Library of Norway* has answered a question about copyright and the use of links on its FAQ list. The answer states briefly: "We presume that it is not a violation of the copyright law to make links to other sites on the Internet. The sites must not contain illegal material or be in conflict with the copyright holders' rights" (unauthorized translation).

### **The digitization program of The National Library of Norway and copyright questions**

*The National library of Norway* claims to have one of the most ambitious digitization programs in Europe, in order to make their vast collections accessible on the Internet. It will be done in cooperation with the *European Digital Library*, where a number of European national libraries take part. This program has been inspired by the Google digitization initiative. The idea is not only to make electronic reproductions for conservation, which is covered by Norwegian copyright legislation, but to make recent copyright protected material accessible to the public as well. This is done in cooperation with the Norwegian copyright holder organizations. In March 2007 the National Library of Norway signed an agreement with The Norwegian Publishers Association, and other copyright holders, concerning 1400 books, which were not in the public domain. The deal is a pilot project to gain experience about technology and the agreements (Skarstein 2007). So far the material picked out for digitization concerns Northern Norway.

For reference librarians it is important that those parts of the library's collection which can be used in reference work come first. Books which are popular and interesting for school children, students and teachers should be on top of the priority list (Høivik 2007).

### **Conclusion**

With the transformation of the libraries' printed reference tools into electronic formats, licences to use the databases will become increasingly important. The Danish and Swedish ATL services have more written contracts with database suppliers than the Norwegian service.

May be this explains why copyright is not considered a problem in the Danish and Swedish services? The question of payment must be considered by the Norwegian service, but it can be solved by consortium agreements, through *The Norwegian Archive, Library and Museum Authority (ABM-utvikling)*. Access to licence databases and permission to transmit the content will increase the quality of answers in digital reference work.

With the digitization projects of The Norwegian National Library and Google, vast amounts of library material will become available. Many other libraries will also digitize their own collections and make them freely accessible on the Internet. As time goes by, because of time limits to copyright, large amounts of library material will be swept into the public domain. Open access archives will also contribute with material freely available. Acquisition of new library material, however, will not make the problem of copyright go away. But contracts for access will perhaps make copyright legislation less important in the future?

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