

## Questionnaire Session ID1

### ALAI 2001 Congress: “Adjuncts and Alternatives to Copyright” June 13-16, 2001 at Columbia University, New York City

*Topic I: Technological Protection of Copyrighted Works, and Copyright Management Systems*  
*Part D: What is the appropriate scope of copyright in a world of technological protections?*

*Session 1: The New or Evolving “Access Right”*

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We would be grateful if those national reporters who can answer the questionnaire in both French and English would do so.

**PLEASE APPEND TO YOUR REPORT THE STATUTORY TEXTS CORRESPONDING TO YOUR ANSWERS, AS WELL AS CITATIONS TO RELEVANT JUDICIAL DECISIONS**

#### Introduction

It has been argued that in the digital environment, an “access right” is developing. The term may be somewhat ambiguous, as it is occasionally used for describing *limitations* on the exclusive right of the copyright holder, in the sense of granting the public “access” to the work without the consent of the copyright holder. In this context, however, the term is used to describe an exclusive right of the copyright holder to control the user’s access to the protected work. For instance, *if* access to the work is protected by a technical device, *and if* national legislation includes a prohibition on breaking or circumventing such a device, the *result* may be that the user needs a license from the right holder to access the work, or needs to obtain access through a library or other entity that has a license to provide its patrons with access. In such a case, the access right is achieved rather indirectly.

One may also conceive of legislation that more directly requires a license to access the work. In the analog context, copyright owners used to be able to control access to their works by limiting their disclosure to public performances rather than distribution in copies. Mass market tape machines, however, made it possible to convert broadcasts to copies, thus obliterating the distinction between distribution of copies and public performance. In the digital environment, by contrast, this blurring of performance and reproduction will be enhanced, but legal control over access may be retrieved, notably through the doctrine of “temporary copies” made in in computer memory or in the course of digital transmissions. As a result, copyright laws that prohibit unauthorized temporary reproductions might be viewed as establishing an access right.

The questionnaire is designed to expose developments in national law or policy towards an access right. This questionnaire does not ask for information on technical aspects of measures for the protection of copyrighted works, but there are relations to this issue, therefore feel free to indicate these if you think it may be pertinent.

#### Questionnaire

1. Does your country's legislation characterize as an exclusive right of the copyright holder the act of making available to the public a protected work:
  - a. by the distribution of copies to the public; and/or
  - b. by public performance, by public exhibition; and/or
  - c. by other means (please specify)

2. If a temporary reproduction is made in the random access memory (RAM) of the central processing unit (CPU) of a computer (work station), is this reproduction characterized as a "copy" by the law of your country?
3. Does your country have a rental right or a public lending right?
4. Describe ways in which users in your country may legally obtain access to copyrighted works in hard copy form. What legal, physical or other restrictions, constraints exist?
5. Describe ways in which users in your country may legally obtain access to works in electronic form. What legal, physical or other restrictions, constraints, exist?
6. In your country, are there provisions in national legislation addressing analog or digital audio broadcasts or digital television transmissions, for instance limiting the ability of the public to make private copies by tape, by downloading or otherwise?
7. In your country, are there provisions in national legislation specifically addressing the more intensive private use of works made possible by taping, for instance a levy on blank tape? If yes, could you briefly describe the system?
8. In your country, are there corresponding levy or similar compensation provisions addressing private copying by other means, especially for downloading protected material?
9. In your country, are there provisions in national legislation especially addressing the reprography (by photocopying or similar means) of protected works?
10. Have there been in your country any policy discussions on the development of an "access right" or related issues? If so, please describe the nature of the discussions, and their participants.
11. Does your country's legislation include provisions enacting any rights similar to the "access right" indicated in the Introductory Remarks to the questionnaire, either indirectly or expressly?
12. If an "access right" has been enacted in your country, what is the scope of the right?
  - a. Does it restrict the act of obtaining unauthorized access, the manufacture or making available of devices to assist in obtaining unauthorized access, or both?
  - b. What exceptions or limitations, if any, have been provided for?
  - c. In your view, are the exceptions and limitations appropriate, too broad, or too narrow?
  - d. What has been your country's experience with the access right to date?
13. If an "access right" has not been introduced in your country, do you think such a right would be advisable?
  - a. If so, what do you think would be the appropriate scope of such a right? What exceptions and limitations do you believe are critical? Do you believe the exceptions and limitations should be coextensive with those provided for under copyright law?
  - b. Do you believe that there are aspects of the digital environment that suggest an "access right" should have different exceptions (broader or narrower) than copyright law provides?
14. If there are, in your country, judicial decisions rather than (or in addition to) statutes or regulations which are relevant to any of the questions above, please cite and summarize them, and, if possible attach copies.