



**EFF STATEMENT IN SUPPORT OF CHILE'S PROPOSAL FOR  
HARMONIZED INTERNATIONAL COPYRIGHT EXCEPTIONS FOR  
LIBRARIES AND ARCHIVES, THE DISABLED, AND EDUCATIONAL USES  
PRESENTED AT WIPO SCCR, November 22, 2005**

Thank you, Mr. Chairman. Congratulations on your appointment. Thank you for the opportunity to present the views of my organization at this important meeting.

The Electronic Frontier Foundation is an international public interest non-profit organization, with offices in the USA, the UK and Canada, dedicated to protecting civil liberties, freedom of expression and the public interest in the digital environment.

For the first time in human history we have the technology to realize the dream of making all the published works of humankind available to everyone in the world. We live in a digital world, and the Internet provides the promise of universal access to the knowledge that is stored in the world's libraries. There are many international collaborative projects currently underway focused on making that happen.

These enterprises rely on committed volunteers working across many different countries, the goodwill of the many libraries that are making their works available for digitization, the support of national governments and on new technologies that enable access to digital works to those who live in remote areas, or who have disabilities. At the moment, many of these public-spirited projects work within a framework of uncertainty brought about by constraints imposed by differing national copyright regimes. These projects would all benefit from the greater certainty that would come from harmonized international copyright exceptions for libraries and archives, for the disabled, and for educational uses.

There is no single international public domain, so collaborative projects that seek to make public domain works available online must work as separate national units, or risk cross-border litigation. There are potential risks for those who make works available online, for those who want to create local mirror copies of digital collections to improve access time and reliability in their own countries, and risks also for the teachers and students who seek to utilize such international knowledge resources.

For instance, Project Gutenberg, which has made available electronic texts of over 10,000 United States' public domain works, warns readers outside of the United States not to copy or download texts. And in 2004 Project Gutenberg was threatened with legal action in the United States when Project Gutenberg Australia, a separate entity, made available a work that was in the public domain in Australia but not in the US.

Other projects such as the Open Content Alliance, and the Internet Archive's Open Library web-page which provide free web access to public domain works in the important book collections from the libraries of the Smithsonian Institution, the University of California, Johns Hopkins University, nine Canadian university libraries, the National Science Foundation and library collections from India and China, face similar challenges that limit their ability to provide a full range of services to library

patrons around the world. And the Internet search engine Google's project to create a free electronic card catalogue of the library collections of Oxford, Harvard and Stanford Universities, the University of Michigan and the New York Public Library, has been slowed by the threat of litigation in the United States.

These are public-spirited projects, designed to deliver real benefits to all of humanity. These entities need to have the ability to know, to a certainty, whether the work of one can be lawfully built upon by another. They must know whether a work scanned in to give access to a blind person in Canada can be lawfully archived in Europe. They must know whether a page scanned in Australia can be translated into French in Quebec and communicated to Haiti and Francophone Africa. The entities that develop the technologies that make this all possible also need legal certainty to continue and expand their efforts to support universal access, and distance education.

This is not just a question for developing countries. The British Library is just one of many international libraries undertaking a project to archive and make available the web-pages produced by its citizenry as a means of capturing and preserving the quicksilver years at the dawn of the Internet age. However, the British Library lacks the statutory right to archive, nor to make that archive available. And so they are embarking upon a Sisyphean labor to contact and secure permission from every British web-site author, one at a time, in a series of grinding negotiations. A set of exceptions and limitations for archiving would make this pointless labour vanish, so that the archivists could get on with archiving.

EFF firmly believes that a mandatory set of common exceptions and limitations is required to preserve room for socially beneficial activities such as distance education, and to foster creativity and technological innovation across the world.

Accordingly, we welcome the proposal put forward by the honorable delegate of Chile to discuss these issues and work towards finding international solutions to the current restrictions on global access to knowledge.

As a first step towards facilitating that discussion, EFF respectfully recommends that WIPO should commission a study to be undertaken of the range of limitations and exceptions in respect of libraries and archives, disabled people and educational uses, that currently exist in Member States' national copyright regimes, and make it available to delegates prior to the June 2006 session of the Standing Committee. This study could build on and complement the important review of the international legal framework for exceptions and limitations undertaken by Professor Ricketson in 2003 in WIPO document SCCR/9/7.

Thank you for your consideration.