

# Treaty On Access to Knowledge (A2K)

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## I. Introduction

- a. Treaty on Access to Knowledge (A2K) is a new WIPO treaty currently being developed in order to “protected and enhance [expand] access to knowledge.”
- b. Current draft: <http://www.cptech.org/a2k/consolidatedtext-may9.pdf>

## II. The Importance of Access to Knowledge/Information and Opposing Trends

- a. Traditional Approach – Copyright was compromise authors got exclusive economic rights for limited time

- i. Authors/publishers want to maximize their “return on investment” - if works can be copied w/o consequence no strong incentive to create works
- ii. Public (and authors) want/need a large pool of freely available knowledge
  1. Having works constantly enter the public domain benefits society at large b/c there is greater pool of creative expression to draw from
  2. Example – Burnett’s Secret Garden. after entering public domain many new versions created: <http://tinyurl.com/aqlqy> [law.asu.edu]

- b. Current Trend – Maximize Copyright Protection

- i. “Piracy Panic”

1. Producers believe that new technologies == new ways to pirate:
  - A. Anti-DRM circumvention legislation – what if public domain work is protected by DRM that can’t be bypassed legally?
  - B. Proposed Dutch iPod tax of ~ €3/gb:  
<http://www.dmeurope.com/default.asp?ArticleID=7485>

2. Fear of piracy blocks positive applications:

- A. Coverions

- i. Libraries want to move old formats to digital formats
- ii. Converting a copyrighted book to Braille okay in US but sending Braille version to a blind person in South Africa is not okay b/c South Africa doesn’t have an accessibility exemption [Doctorow 2005]

- B. Schools reluctant to deploy distance education – could violate distribution right if lectures contain copyrighted works
  - 3. Fear of piracy is not new (comparison of p2p and prior technologies): <http://www.consumerfed.org/pdfs/benefitsofpeertopeer.pdf>
- ii. Copyright viewed as a means to combat piracy
  - 1. Retroactive copyright extensions
    - A. Only 1-4% of works produced since 1923 still are in circulation and benefit from copyright protection [Boyle 2004]
    - B. Public access to many works w/o no commercial value blocked b/c the owners of a few works want protection. Some examples: <http://tinyurl.com/8thyt> [law.asu.edu]
    - C. Loss no longer theoretical b/c Internet and digital technologies significantly reduce costs of re-printing and disseminating out-of-print books/films [Boyle 2004]
  - 2. GATT and WIPO being used to deploy “minimum levels” of protection worldwide
    - A. Developing nations urged, esp. via trade agreements, to increase protections [Boyle 2004]
    - B. Development of Japan and Korea (historically weak IP protection), suggests this is not the best approach [Maskus and Riechman 2004]

### III. Treaty on Access To Knowledge (A2K)

#### a. Timeline

- i. Aug 2004 - At 31<sup>st</sup> WIPO General Assembly Argentina and Brazil proposed the Establishment of a New Development Agenda arguing that:
  - 1. WIPO's should focus on “broad development goals” rather than limiting itself “to the promotion of [IP] protection” [WO/GA/31/11]
  - 2. Current efforts w/in WIPO would require developing nations to agree to higher protection standards than even TRIPS
    - A. Compliance w/ TRIPS is already expensive
    - B. Requiring DRM obstructs free flow of information and scuttles “new arrangements [to] promote innovation and creativity” [WO/GA/31/11]

- ii. Oct 2004 - Argentina and Brazil's Proposal for the Establishment of a New Development Agenda for WIPO accepted by the WIPO General Assembly
  - iii. April 2005 - 1<sup>st</sup> Inter-sessional intergovernmental Meeting on a Development Agenda for WIPO – Initial A2K discussions
  - iv. May 2005 – London A2K Workshop resulting in 1<sup>st</sup> version of the A2K Treaty
  - v. Sept 2005 - New Development Agenda and A2K on WIPO General Assembly's Agenda
- b. Goals [A2K Part 1 Preamble]
- i. Create “opportunities to participate in development of knowledge resources”
  - ii. Support “innovation, development and social progress” by maximizing the “opportunities arising from technological progress.”
  - iii. “Protect, preserve and enhance the public domain, which is essential for creativity and sustainable innovation”
- c. Main Provisions
- i. Part 3 - Exceptions and Limitations to Copyright
  - ii. Part 4 - Limitations on patents (subject matter, types, uses)
  - iii. Part 5 – Expanding the Knowledge Commons
  - iv. Part 6 – Promotion of Open Standards
  - v. Part 7 – Control of Anti-Competitive Practices
- d. Copyright Provisions
- i. Art 3-1 – General Limitations and Exceptions to Copyrights
    - 1. Art 3-1(a)(i),(iii),(iv) – Teaching exemptions
    - 2. Art 3-1(a)(ii) – Criticism/Parody exemption
    - 3. Art 3-1(a)(v), Art3-4 – Library Exemptions
      - A. Member nations must allow libraries to archive or move works from one format to another
      - B. Member nations must allow libraries to lend works they have legally acquired w/o paying additional fees
    - 4. Art3-1(a)(v) – Reverse-engineering exception
    - 5. Art3-1(a)(vii), Art3-3 – Accessibility exemption
      - A. Member nations must permit libraries and schools to convert works from one format to another for accessibility reasons
      - B. DRM legislation in member nations must make exceptions for accessibility

6. Art 3-1(a)(viii), Art3-8 – Exemptions for “orphan” works
- ii. Art 3-2 – Provisions regarding Distance Education
  1. Limits exclusive economic rights wrt performance of non-dramatic literary works, limited portions of dramatic literary works and displays
  2. Permits schools to record and retain copies of distance-education transmissions for limited time
- iii. Art 3-6 – DRM
  1. Art 3-6(b)(i-v) – Requires that member states allow DRM to be bypassed in many situations including: (1) license terms prevent open source implementations, (2) DRM prevents access for the disabled, (3) DRM protects a public domain work or work protected under a term longer than what Berne/TRIPS requires
  2. Art 3-6(e),(f) – Requires that contracts (1) not preclude bypassing DRM in legal ways or (2) not preclude the distribution of technology that allows for DRM to be bypassed in legal ways.
- iv. Other provisions
  1. Art 3-9 – Members agree that copyrights will not be extended retroactively beyond the requirements of TRIPS
  2. Art 3-12 – Simplified compulsory license to copyrighted works for developing countries

#### IV. References

- a. Treaty on Access to Knowledge: <http://www.cptech.org/a2k/consolidatedtext-may9.pdf>
- b. Proposal for the establishment of a new development agenda: [http://www.wipo.int/documents/en/document/govbody/wo\\_gb\\_ga/pdf/wo\\_ga\\_31\\_11.pdf](http://www.wipo.int/documents/en/document/govbody/wo_gb_ga/pdf/wo_ga_31_11.pdf) [WO/GA/31/11]
- c. General Assembly Decision accepting the Proposal: <http://www.cptech.org/ip/wipo/wipo10042004.html>
- d. A Manifesto on WIPO and the Future of Intellectual Property [Boyle 2004]: <http://www.law.duke.edu/journals/dltr/articles/PDF/2004DLTR0009.pdf> 2004 Duke L. & Tech. Rev. 9
- e. The Globalisation Of Private Knowledge Goods And The Privatisation Of Global Public Goods [Maskus and Reichman 2004]: <http://jiel.oxfordjournals.org/cgi/content/abstract/7/2/279> JIEL 2004.7(279)
- f. Rewriting the Web’s Rules [Doctorow 2005]: Pop. Sci. June 2005 pp 50-52.