



International Federation of
Library Associations and Institutions



A WIPO TREATY THAT BENEFITS LIBRARIES, ARCHIVES, AND THEIR USERS

THE SOCIAL VALUE OF LIBRARIES AND ARCHIVES

Every day, libraries and archives in all parts of the world help hundreds of millions of people meet their work, study, research and leisure needs. The services that libraries and archives provide enrich people's lives and support important public policy goals such as literacy, education, scientific research, employability and health awareness. By collecting and providing access to information libraries and archives support society in general and the cultural and scientific sectors in particular by bringing the works of today and yesterday to new generations of users. Libraries and archives foster the sharing and spread of ideas, stimulating and enabling new creations around the world.

THE CHALLENGE OF ACCESS AND PRESERVATION

In addition to making available new works, libraries and archives are often the only institutions where knowledge that is no longer available commercially, or that has entered the public domain, has been preserved and is available for re-use by citizens, academia and business interests alike. New technologies have transformed access to this knowledge and created new opportunities for users to take part in an inclusive information society as set out in the declaration and principles of the World Summit on the Information Society.

Libraries and archives must continue to provide access to works, preserve them, and make them available to their users in accordance with the demands of a digital and globalized information society. However, now more than ever, libraries and archives are subject to legal and regulatory copyright frameworks that have lost sight of the importance, needs, legitimate expectations and rights of libraries, archives and their many users.



THE PROBLEM: A LACK OF COPYRIGHT BALANCE FOR LIBRARIES AND ARCHIVES

Libraries and archives work under a patchwork of provisions that differ in scope and effect from country to country, and that increasingly fail to address the legal and policy challenges of the global digital environment. At the same time, new treaties protecting rights holders and new ways to control access to content have been adopted. As has been shown in a recent WIPO study¹, as well as the data gathered by library and archive organisations², the current national and international systems of copyright exceptions and limitations for libraries and archives (when they exist at all) have not been updated for the digital environment, and fail to recognize the minimum level of protection and legal certainty³ that libraries and archives require to provide their historical and new services, in pace with technology change.

Major problems that need to be addressed by international norm setting are:

- The absence in many countries of exceptions to copyright for core activities, like preservation, replacement, lending, even for print materials.
- Exceptions to copyright which enabled libraries and archives to preserve and make available works in the print era have not been updated to the digital age, particularly with respect to digital archiving and virtual learning environments.
- Imposed licences for the provision of digital information are often used to undermine exceptions and limitations to copyright designed to support education, learning and creativity.
- Prohibitions to circumvent technological protection measures (TPM) in order to preserve, archive and enable permitted use of lawfully acquired digital content, are hampering research, leading to an incomplete cultural, scientific and historical record.
- The cross-border, multi-jurisdictional nature of the Internet is not reflected in current copyright law. Restrictions on the legitimate flow of information and cultural content provided by libraries across international borders will constrain innovation and growth in under-developed and developing countries.

1 A WIPO study found that 21 countries worldwide had no specific copyright exception for libraries and archives, and that 27 countries had only a general exception (http://www.wipo.int/edocs/mdocs/copyright/en/sccr_17/sccr_17_2.pdf)

2 The IFLA World Report 2010 (http://www.ifla-world-report.org/files/uploaded/ifla_wr/IFLA-WR-2010-Analysis-and-Conclusions.pdf)

3 For example, libraries and archives now provide access to large quantities of “born digital” works that are not available in print format. Without legal certainty about whether libraries or archives may harvest, organize and format-shift this material for future access, the world faces a digital ‘black hole’ of late 20th and 21st century material.



PROPOSED SOLUTION: AN INTERNATIONAL TREATY THAT BENEFITS LIBRARIES, ARCHIVES, AND THEIR USERS

To resolve those major problems, and in accordance with the agreed exceptions and limitations agenda of the WIPO Standing Committee on Copyright and Related Rights, IFLA, EIFL, Innovarte, ICA, and other international organizations supporting libraries and archives, have proposed an international treaty that would provide both a mandate to update exceptions for libraries and archives worldwide, and guidelines on the issues that have to be addressed to protect adequately library and archive functions as well as legitimate copyright interests.

The draft treaty does not seek to impose harmonization or a ‘one size fits all’ approach. It suggests a basic foundation for all countries, setting out a framework for national copyright laws that is flexible and consistent with both existing international law and a positive way forward to implement the agreed statement concerning Article 10 of the WIPO Copyright Treaty.

This proposed instrument has been designed to accommodate common needs as well as differentiation according to levels of development and particularities of member countries. Although the proposal makes it mandatory to address certain key issues, in most cases there is flexibility for implementation, using the international standard of “fair practice” as set out in the Berne Convention. In addition it also allows grandfathering of current legislation and the possibility for a Member State to make a reservation. The instrument would create an international right for libraries to be provided in national laws to support exceptions or limitations to copyright that would enable the following activities:

PROTECTED ACTIVITIES IN THE TREATY PROPOSAL

- The preservation of materials for posterity, with the flexibility to access cultural works in copy-protected formats in order to complete preservation steps before the formats they were created in become inaccessible
- The support of education, research, and private study
- The making or receiving of copies of works lawfully acquired by a library or archive for personal and private purposes, in accordance with fair practice
- Supplying copies of works in response to requests from individual users
- The provision or lending of lawfully acquired content on a not-for-profit basis
- The support of people with disabilities in the exercise of their right to access content
- The circumvention of TPM for the purpose of permitting a non-infringing use of a work
- The limiting of the risk of liability to libraries and archives with respect to orphan works, in order to facilitate mass digitization projects



The international library and archives community, represented by IFLA, EIFL, Innovarte, and ICA, with the support of other members of civil society, look forward to working with government, WIPO and other stakeholders to constructively achieve, based on this proposal, a balanced copyright international framework that can effectively support important public policy goals and creativity for a better world.

Draft Treaty on Copyright Exceptions and Limitations for Libraries and Archives:
<http://www.ifla.org/files/clm/publications/tlib.pdf>

“Users of libraries and archives are being shortchanged in the digital revolution. We must have balanced copyright frameworks that support access to knowledge and drive research, innovation and culture. Only copyright exceptions and limitations can form the basis of meeting these global needs, and guarantee user rights in all countries of the world.” Ellen Tise, President of the International Federation of Library Associations and Institutions (IFLA)

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