



**World Intellectual Property Organisation
Standing Committee on Copyright and Related Rights
SCCR 29
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General statement by the International Council on Archives

Archives exist in every country of the world in all types of governmental and non-governmental institutions. Wherever documents are preserved and made available so that people can use them, you are dealing with archives. All governments, all companies, all organisations, all families create records and preserve them so that they know what has been agreed and done in the past, so that they preserve their past, and to support accountability to the public or to their successors. These documents then become the essential sources for cultural, academic, social and scientific research. Archives exist to ensure that this human record survives and is available for all to use.

Archives however have a problem. They hold billions of copyright works. These were not created or intended for commercial purposes. Yet, from the poorest countries to the richest, archives are hamstrung by a web of copyright laws that were intended for commerce and that have failed to keep up with social and technological development. The Deputy Director General in her very welcome introductory remarks reminded us that we live now in a borderless world. For archives, though, the world is far from being borderless.

At successive meetings of this Committee, I and other representatives of archival NGOs have given many examples of the need for mutual recognition by member states of exceptions and limitations to copyright so that archives everywhere can serve people across the world. Nevertheless, we continue to hear assertions from groups representing developed countries that national solutions are sufficient. They are very far from being sufficient. A borderless world needs solutions that apply in a borderless manner.

My understanding is that the United States of America, Canada and Australia, and possibly several more countries, have federal copyright laws. If copyright were left to the constituent states of those countries, they would be unable to provide solutions to internal cross-border issues. The federal law makes copyright borderless within those countries. Likewise, the European Union has copyright directives that apply to all member states and we have been told that the EU is different because of the needs of its internal market. The EU has now provided in its orphan works directive that the member states must give 'mutual recognition' of each other's national

laws. The availability of material online will give citizens of the EU access to their cultural heritage. This is response to a cultural, not a commercial, need, though it will at the same time assist the internal market by giving creators the materials to inspire the creation of new works. This non-commercial availability of library and archives materials is a facilitator for the internal market. It is not itself a function of the internal market. It depends on 'mutual recognition' across borders.

It is this mutual recognition that archives and libraries need worldwide. If it's good for the EU, why would it not be good for the rest of the world?

Archivists are well aware of copyright. They think about it every time they are asked for a copy, every time they decide that something needs to be made available online to the wider world. When they think about copyright, they are thinking about how to protect the commercial and personal interests of rights owners. However, they have a job to do. Government ministers, members of the public and creators all want access to the records held in archives, and it is the job of the archivist to provide that access. Resistance to change by rights owners and by backward-looking states will in the end result in copyright being ignored, not respected. This has already happened in society generally with the widespread copying of music to new media for personal use. The International Council on Archives believes that change is essential, but that uncontrolled change will cause far more damage to rights owner interests than the carefully measured movements requested by libraries and archives.

Tim Padfield
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