



INTERNATIONAL FEDERATION OF LIBRARY ASSOCIATIONS AND INSTITUTIONS
FEDERATION INTERNATIONALE DES ASSOCIATIONS DE BIBLIOTHECAIRES ET DES BIBLIOTHEQUES
INTERNATIONALE VEREINIGUNG BIBLIOTHEKARISCHER VERBÄNDE UND EINRICHTUNGEN
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МЕЖДУНАРОДНАЯ ФЕДЕРАЦИЯ БИБЛИОТЕЧНЫХ АССОЦИАЦИЙ И УЧРЕЖДЕНИЙ
国际图书馆协会与机构联合会
الاتحاد الدولي لجمعيات ومؤسسات المكتبات

COMMENTS BY THE INTERNATIONAL FEDERATION OF LIBRARY ASSOCIATIONS AND INSTITUTIONS (IFLA) TO THE CONTENT REGULATION IN THE DIGITAL AGE 2018 HUMAN RIGHTS COUNCIL REPORT

SUBMITTED ON 20/12/2017

The International Federation of Library Associations and Institutions (IFLA) is an international organisation with over 1400 members from 142 countries. It works to support the delivery of excellent service by the library and information profession, and to advocate for the wider laws and frameworks that make this possible. IFLA supports, defends and promotes the rights defined in Article 19 of the Universal Declaration of Human Rights as the basis for intellectual freedom.

Online content platforms have an important role in enabling access and sharing of information in the digital age. They deliver news, let users create and publish their content as well as help them in their online searches. Undoubtedly, they have made a major contribution to free expression and access to information, as well as wider social and economic progress.

As digital has become dominant as a means of accessing information, ideas and culture, libraries have become increasingly dependent on content stored elsewhere – often on or via these platforms. Our members' ability to do their job – and in particular to protect the intellectual freedom of users – relies on platforms working effectively.

Content providers and platforms do not, however, necessarily have much accountability to users, who often either face little choice, or high barriers to switching. Meanwhile, for all the criticism that they are lawless, there is a growing concern that governments and others are pressuring them to take steps that States themselves cannot, for legal or practical reasons, with potentially negative consequences for intellectual freedom¹. This freedom is a major concern for the institutions and professionals that IFLA represents.

IFLA therefore submits this statement ahead of the Human Rights Council's 2018 report to express its views on about content regulation in the digital age. We tackle, in particular, the following questions:

- Global Removals
- Individuals at Risk
- Content Regulation Processes
- Automation and Content Moderation

¹ Belli, Luca and Zingalo, Nicola (2017), *Platform Regulations: Preview*, https://www.intgovforum.org/multilingual/index.php?q=filedepot_download/5133/768 (accessed on 19 December 2017)



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Global removals: a threat to freedom of expression?

Global takedowns can represent a major challenge to fundamental rights such as freedom of expression and freedom of access to information. IFLA argues that information, on the Internet or offline, should, as a rule not be intentionally hidden, removed or destroyed, save in exceptional circumstances.

IFLA's 2016 statement on The Right to be Forgotten² underlined several specific issues raised by the possibility for an individual to request that a search engine (or other data provider) remove links to information about himself or herself from search results. There is broad acceptance of the importance of preserving a complete version of the historical record – for example through the existence of legal deposit laws – but right to be forgotten decisions can run counter to this mission. Name-based searches, in particular, risk becoming less reliable. Given that today's Internet has grown so large because of the possibility of search, delinking has the same effect as concealing information³.

As mentioned in the statement, “intentionally reducing access to information through RTBF may also frustrate the freedom of expression of the author or publisher of the information no longer found, where the author had the right to publish that information”. There have been particularly concerning stories from Italy about judges deciding that news should have a ‘shelf life’⁴. For libraries, which work to help people find the information they need without making judgements about their motivations, this risks making our mission impossible.

We understand that there exists a major question as to what an individual or entity should do in order to make sure that the information is not available on the net, when a claim is judged to be lawful. This can be the case, when the information is ‘unfairly damaging to an individual’s reputation or security where it is untrue, where it is available illegitimately or illegally, where it is too personally sensitive or where it is prejudicially no longer relevant’⁵. However, the right to be forgotten also covers materials over which there is no question as to their veracity or legitimacy.

We are certainly concerned by the fact that governments in Europe at least have been ready to leave decisions on the right to be forgotten to companies, whose processes are not necessarily transparent. The fact that the incentive for the company, in order to avoid fines, will tend to be to take content

² IFLA (2016) *IFLA Statement on the Right to be Forgotten*, <https://www.ifla.org/publications/node/10320>

³ For now, there is no obligation to delete information, only to delink. However, with the General Data Protection Regulation, in particular in countries that do not implement an archiving exception, libraries could also find themselves obliged to delete original information. There have already been judgements requiring the deletion of names from digitised newspaper archives.

⁴ The Guardian, *How Italian Courts used the right to be forgotten to put a shelf-life on news*, 20 September 2016, <https://www.theguardian.com/media/2016/sep/20/how-italian-courts-used-the-right-to-be-forgotten-to-put-an-expiry-date-on-news> (consulted 19 December 2017)

⁵ IFLA, *ibid*



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down, without necessarily telling the website affected, is not to be welcomed. There is a need for further transparency in company procedures.

It may well be justifiable that a national court decides to issue a decision ordering the de-indexing of content from a search engine. However, this is necessarily a decision based on a judgement on the merits of a case according to norms and laws in place in the State where the court is based.

These norms and laws may not reflect those prevailing in other countries. Applying decisions across borders therefore risks subjecting the ability of a citizen in country A to the decision of a judge in country B. As many others have suggested, it also offers a blank cheque to countries whose approach to access to information is different to censor information elsewhere. This would make the work of those who seek to carry out research, to inform the public of what is going on, or to investigate crime or corruption.

In the ongoing case opposing Google and the French National Council on Information and Liberties (CNIL), Google has already moved to geo-block users – i.e. to ensure that even if they are using google.com, rather than European versions, they will still not see the removed results if they are in Europe. This is already an unfortunate development, given that previously, the possibility to make a search using a different domain ensured that a committed researcher would be able to find the information anyway. However, the CNIL’s insistence on global removal of results would be far more regrettable still. It is only in the most specific cases that there might be a reason to remove results from search results globally⁶.

Other cases, such as that opposing Google and the Canadian Supreme Court⁷ earlier this year imply a similar effort to apply the laws of one nation in another, and set a worrying precedent for the restriction of citizens’ access rights.

Individuals at risk: privacy of library patrons

The privacy of library users is a major concern for the institutions and professionals that IFLA represents. Librarians are trained professionals that have sought to take appropriate measures to respect users’ privacy, given the chilling effect that surveillance or supervision can have on intellectual freedom. As mentioned in the 2015 IFLA Statement on Privacy in the Library Environment, “excessive data collection and use threatens individual users’ privacy and has other social and legal consequences.

⁶ See IFLA, *Application of Right to Be Forgotten Rulings: The Library Viewpoint*, Open Letter, 26 October 2017 https://www.ifla.org/files/assets/faife/statements/161024_ifla_on_rtbf_case_in_france.pdf

⁷ Globe and Mail, *Free speech advocates shocked after Supreme Court orders Google to block website of company accused of stealing trade secrets*, 28 June 2017 <https://www.thestar.com/news/canada/2017/06/28/google-must-block-search-results-of-tech-company-worldwide-supreme-court-rules.html> (accessed 19 December 2017)



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When Internet users are aware of large-scale data collection and surveillance, they may self-censor their behaviour due to the fear of unexpected consequences. Excessive data collection can then have a chilling effect on society, narrowing an individual’s right to freedom of speech and freedom of expression as a result of this perceived threat. Limiting freedom of speech and expression has the potential to compromise democracy and civil engagement.”

As a result, data collected from library users has long been safely stored, and librarians keep secrecy about the inquiries they assist users in making. Information on what and how is accessed is not disclosed unless under a legal obligation. Some libraries, notably in the US, are simply deleting records to avoid them being accessed. Moreover, with analogue works, users alone knew which pages of books they consulted.

However, with the rise of digital tools, more and more users’ private information that used to be adequately stored in the library or simply known by librarians is now on the hands of third parties. Libraries can no longer necessarily have control or decide upon how data related to users accessing the works is kept, raising many questions around privacy and access to information. The concern with eBooks in particular – where data not only on what people are reading, but also on how far they get into a book, and where they are paying particular attention can be harvested.

This information is therefore rather in the hands of third-party vendors. Examples can include providers of eBooks (OverDrive is the dominant platform), journals, databases and other sources of digital information available to users. This can jeopardise the intellectual freedom that users seek, especially those who may have specific needs or come from groups which are marginalised or subject to discrimination.

In order to avoid a situation where freedom of speech is compromised, it is therefore important to ensure transparency about the way in which library users’ data may be used by third party vendors. Training initiatives, such as the Data Privacy Project in New York can help librarians themselves understand the risks and act against them. But efforts against any disproportionate electronic surveillance or monitoring need to be made at an international, regional and national level.

Content regulation processes: a major concern for information professionals

Platforms which host user-generated content have permitted a flowering of new types of creativity and expression, notably by individuals and groups who may struggle to sign contracts with more traditional actors in the field. They have, therefore, an important role in facilitating free expression. All major content platforms and providers have published community standards and publication guidelines that address a variety of controversial matters such as online pornography, hate speech and inappropriate content. The [Guardian](#) has its own list of community standards available online as well as [Facebook](#) and [Google](#) just to name a few.



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However, content moderation and the actions taken to address controversial topics online remains an opaque process in many cases. While social media sites and online content producers have been rightly concerned in stopping material that is illegal, the lack of clear and consistent guidelines for the moderation of content concerns libraries and information professionals worldwide. Users, supported by librarians, cannot do their job of promoting information literacy – and notably the ability to recognise where information provided is not complete – if there is no way of understanding the process that has been followed.

For example, social media platforms moderate online content by flagging, unconfirming or escalating content. If content has been flagged by a user and the moderator confirms the action, the post is deleted. If the moderator unconfirms the action, the post is left online. If the post is escalated the action implies further review.

These steps seem innocuous, but it is unclear what kind of content is reported, what is confirmed, and what is escalated. What criteria exist for judging content, and what possibility is there to rethink these? How are general community standards translated into specific rules, and how well do these rules fit the content being uploaded? And ultimately, why and for what reasons are certain posts never published? Content providers should make clear to users not only the ways in which online information is curated, but also by whom and to what ends.

IFLA therefore underlines the need to ensure that online information is not removed or censored without oversight or further review. The lack of transparency can be particularly harmful for minority groups. In their code of ethics, library workers recognize that the right of accessing information is not denied to anyone and that equitable services are provided for everyone whatever their age, citizenship, political belief, gender identity, race, religion or sexual orientation. When the acceptability or marginalization of certain topics sits in the hands of content providers, this is a matter of concern for librarians. Minority groups, who may rely on the Internet to do things that they cannot easily do in real life can be particularly affected.

IFLA therefore supports the application of specific, open and transparent guidelines to the moderation of online content. Moderators should receive regular training on race, gender, or religious issues and apply that training in service of those public guidelines. When reaching a decision reading online content, the moderators should consider the community standards, the wider context and the purpose of discussion. There should also be room for appeal and discussion both of specific decisions, and of the overall processes employed.

Automation and content moderation: clear and accountable judgement required

IFLA has particular concerns about the use of automatic filtering. These have come into focus in particular in the context of discussions around Article 13 of the EU's draft Directive on Copyright in



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the Digital Single Market, which could force platforms to vet all uploaded content for potential copyright infringements.

Aside from the impracticality of the proposal – which assumes that platforms have access to all content in the first place in order to check for infringements – and the cost barriers – which will harm smaller platforms most – a key concern is the inability of filtering technology to spot uses of works which fall under copyright exceptions and limitations. With it unclear how much copying constitutes infringement, as well as the inability of a filter to determine the purpose of a use of a work, there is a serious risk that automation will lead to a shrinking of user rights.

For libraries, there is both broad concern about the impact on fair uses of works, and a specific worry about the future of Open Access repositories. These host content uploaded by users (often researchers posting copies of their own works). They are usually run by academic and research institutions, on a not-for-profit basis. They are not in a position to pay for filtering technology, or to bear the liability for mistakes made by researchers in uploading papers.

IFLA therefore recommends that extreme caution be applied in using automatic moderation techniques. The evidence that the working of algorithms can even escape the understanding of their creators only adds to the concern about whether they are working transparently. We recommend that where they are applied, it should only be in conjunction with human judgement.