



TLIB: a treaty proposed for libraries and archives

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Meeting:

91 — *You spoke - IFLA acted: our International Treaty for libraries and archives* — Committee on Copyright and Other Legal Matters (CLM)

Abstract:

This presentation briefly describes TLIB, the international treaty on copyright exceptions and limitations proposed by IFLA, EIFL, ICA and Corporacion Innovarte for libraries and archives.

Thank you. We have heard from the previous speakers about the legal and policy challenges for libraries, and about the uncertain legal situation for libraries in Latin America and the Caribbean.

I shall present a solution that we have developed in response to these issues, in particular, in response to practical issues raised by librarians from all over the world in CLM focus sessions that took place in Oslo in 2005, and Milan in 2009.

The context is that governments - WIPO Member States - agreed in 2008 to re-evaluate exceptions and limitations in the Standing Committee on Copyright and Related Rights (SCCR) - the key committee at WIPO that shapes international copyright law. Our initiative is intended as a constructive proposal to feed into the political process at WIPO, to maximise the opportunities that have been created, and to help resolve some of the issues that we have heard described.

TLIB: proposal for an international treaty on exceptions and limitations for libraries and archives

IFLA, EIFL, ICA, Corporacion Innovarte

CLM Exceptions Working Group

August 2009

- Teresa Hackett, (Chair), Ireland
- Harald von Hielmcrone, Denmark
- Shirley Leung, Hong Kong
- Denise Nicholson, South Africa
- Victoria Owen, Canada
- Tim Padfield, UK (ICA)
- Janice Pilch, USA
- Barbara Stratton, UK
- Luis Villarroel, Chile
- Winston Tabb and Stuart Hamilton (ex officio)

Our solution is a proposal for an international treaty on copyright exceptions and limitations for libraries and archives, known as TLIB.

The treaty was drafted by IFLA, EIFL, ICA, Corporacion Innovarte and some individuals. Members of the drafting group are listed on the slide (mainly members of CLM).

TLIB was launched at the IFLA Presidential meeting in the Hague in April 2011.

Statement of Principles on Copyright Exceptions and Limitations for Libraries and Archives



www.ifla.org/publications/statement-of-principles-on-copyright-exceptions-and-limitations-for-libraries-and-archi

Our starting point was the Statement of Principles on Copyright Exceptions and Limitations for Libraries and Archives issued by IFLA, EIFL and LCA in May 2009.

The 12 Principles address many important issues, such as preservation and orphan works, as well as barriers to the lawful uses of works.

The Working Group took the Principles and drafted them into treaty language. The result is TLIB.

TLIB characteristics

- Provides policy space for countries
 - sets a framework
 - flexible implementation
 - ✓ maintain existing provisions
 - ✓ create new E&L
- Work in progress v3.0 to help **inform** discussion at WIPO and **enrich the debate** with our specialist knowledge

Comments and questions welcome

There are two important characteristics of our proposal:

- It provides policy space for countries i.e. it sets a framework or a baseline to ensure that libraries and archives can function properly in the digital environment. At the same time, it allows for a flexible implementation which recognises that countries are at different stages of economic development, and that national cultures and priorities differ.
- Most importantly it is a work in progress, that we offer to policy makers to help inform the discussion at WIPO.

As professional librarians, we have specialist knowledge about libraries and library practices that we can - and should - share with policy makers to inform their decision-making and to ensure that new international treaties and national laws meet the needs of libraries and the people who use libraries into the future. We welcome comments, questions and scrutiny of the proposal.

Respecting authors' rights

- Consistent with existing international agreements
- Applies to specific activities in pursuit of public policy objectives
- Subject to the international standard of “fair practice”, determined by the national legislator
- Applies to non-commercial uses only
- Does not affect moral rights

I would first like to highlight the boundaries in TLIB to try to ensure that authors' rights are safeguarded and dealt with in a fair way. Libraries respect authors' rights and we seek to ensure a fair balance between the rights of authors and the public interest. Authors, as users and creators of information, benefit also from a rich public domain and a robust system of exceptions and limitations in order to create new works.

- We believe that TLIB is consistent with other international agreements, including the five major copyright treaties affecting libraries i.e. it does not go beyond existing agreements.
- The provisions apply to specific library and archive activities in pursuit of public policy objectives.
- The activities are subject to the international standard of “fair practice” determined by the national legislator in each country, thereby mitigating against any abuse of the legitimate interest of rightsholders. (Adopted from Art 10 Berne Convention).
- TLIB applies to non-commercial uses only, commercial uses are excluded.
- It does not affect moral rights in any way. The existing provisions of the Berne Convention with respect to moral rights do not change.

Rights for Libraries and Archives (Mandatory Exceptions or Limitations)

- Preservation
- Library Lending
- Library Document Supply
- Persons with disabilities
- Education and research
- Personal and private purposes
- Orphan works

I will highlight some of the substantive provisions.

Articles 4-13 set out the Rights for Libraries and Archives (Mandatory Exceptions or Limitations to Copyright and Related Rights), some of which you will recognise from your own national laws.

These include:

Preservation, Library Lending, Library Document Supply, provisions for persons with disabilities, Education and research, Personal and private purposes, and the use of Orphan works.

Rights for Libraries and Archives (Mandatory Exceptions or Limitations)

- Access to Retracted and Withdrawn Works Published in Databases or on Websites
- Cross-border uses of works produced under an E&L
- Parallel Importation
- Obligations to respect E&L (contracts and TPMs)

Contd: Access to Retracted and Withdrawn Works Published in Databases or on Websites, Cross-border uses of works produced under an E&L, Parallel importation.

In addition, there are obligations to respect exceptions and limitations in contracts and Technological Protection Measures.

Each provision has an explanatory note where you can read about the objective and rationale.

The political context

- WIPO SCCR, E&L on the agenda (2008)
- VIPs, libraries & archives, education
- Treaty proposal for VIPs-Brazil, Ecuador, Paraguay, Mexico (2009)
- PWDs, educational institutions, libraries & archives-African Group (2010)
- November 2011, special 3-day session of SCCR focussed on libraries and archives

I said at the beginning that TLIB is intended as a constructive proposal to feed into the discussions at WIPO, and to maximise the opportunities that have been created.

Since 2008, Member States have been discussing exceptions and limitations with work focused on three groups of beneficiaries: blind and visually impaired people (VIPs), libraries and archives, and education. There are currently two treaty proposals put forward by Member States. The first is a treaty for VIPs proposed by Brazil, Ecuador, Paraguay (later joined by Mexico). We fully support the progress that has been made on the proposal, and the aim to reach an agreement at the next SCCR.

The second treaty proposal is for the benefit of persons with disabilities, educational and research institutions, libraries and archives proposed by the African Group. We are most grateful to the African Group for including libraries and archives in their proposal, and for their recognition of the role that libraries and archives play in education and development. We thank the African Group for listening to libraries and for taking many of our requests into consideration. We look forward to working together with the African Group, along with other like-minded countries.

In November 2011, a special 3-day session of SCCR dedicated to libraries and archives will take place in Geneva. This is a unique opportunity to present library issues at the highest international level, to engage with Member States on the substantive issues and in the political process, and to advocate for the best possible results for libraries and archives.

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RELATED CONTENT

- Statement of Principles on Copyright Exceptions and Limitations for Libraries and Archives

Draft Treaty on Copyright Exceptions and Limitations for Libraries and Archives

In 2004, Chile recommended that the Standing Committee on Copyright and Related Rights (SCCR) of the World Intellectual Property Organisation (WIPO) undertake a review of the current state of exceptions and limitations within the larger realm of intellectual property regimes. This recommendation was adopted by WIPO in 2005, and WIPO subsequently initiated a series of studies on exceptions and limitations in specific sectors.

Particularly relevant to the work of IFLA was the study commissioned by WIPO from Professor Kenneth Crews, *"Study on Limitations and Exceptions for Libraries and Archives,"* which WIPO published in 2008. The results of this study revealed that numerous Member States had either no exceptions or limitations for libraries and archives in their national copyright legislation, or had only minimal, general provisions.

To examine the issues and what should be done for the benefit of libraries and archives worldwide, in April 2009 IFLA and EIFL convened a workshop at the British Library comprising librarians, intellectual property specialists, the World Blind Union, and representatives of other NGOs to develop a *set of principles* that should drive creation of an appropriate instrument to facilitate the mission of libraries throughout the world.

We believe that an international solution is needed to enable libraries to function effectively both in the global, digital environment and at national level.

We are delighted that Mr Trevor Clarke, Assistant Director General, Culture and Creative Industries Sector, WIPO is here today, as a positive sign of engagement from WIPO. We believe that fair and reasonable copyright laws that work for people in support of public policy goals will assist WIPO in their strategic goal of Building Respect for IP in a sustainable manner, and make the job of public education easier.

TLIB is available online, with FAQs that explain the context, content and effects of the proposed treaty. We encourage you to read it, to share it with your colleagues back home, and to work with your national copyright office to support libraries and archives at WIPO.

If you would like more information on any aspect, please contact a member of CLM.

Thank you

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Thank you for listening.

