



Consultation of the Special Rapporteur on Cultural Rights

IFLA Response, 26 October 2018

PART I: THE GENERAL RECOGNITION OF CULTURAL RIGHTS IN NATIONAL LEGAL AND POLICY FRAMEWORKS

Nationally based respondents will be best placed to answer this question contained in this part of the letter.

PART II: SPECIFIC ISSUES HIGHLIGHTED BY THE MANDATE'S WORK

1.1 – The Right to Access and Enjoy Heritage

Libraries are the primary institutions in any society for safeguarding documentary cultural heritage, as well as ensuring that everyone has the possibility to benefit from it. IFLA (the International Federation of Library and Information Associations and Institutions) is committed to support libraries in this role, and to identify and overcome barriers.

A key initial challenge is around **preserving digital heritage**. The growing volume of digital content reflects increased possibilities for everyone to exercise their cultural rights. Yet this can be meaningless if there is not the possibility for their work to be integrated into the cultural and historical record.

However, we are far from a comprehensive, durable solution to the challenge of preserving digital heritage. To this end, libraries are engaged in UNESCO's [PERSIST](#) programme, which supports dialogue on how to ensure continuity of content. This provides a valuable opportunity to place key issues around digital preservation in front of governments and others, and accelerate change. Libraries are also engaged in initiatives such as the Digital Preservation Coalition, which build capacity and develop guidance in order to ensure that the format of a work is not a factor in whether it is preserved or not.

A particularly relevant current area of work is around **digital unification**. Much documentary cultural heritage has, due to a variety of circumstances, found itself in countries which were not the original producers of these objects. Technological advances make it possible to digitally bring together collections, and so provide a fuller view a people's history and culture.

However, there can be political, financial, legal and practical challenges to doing this. To offer guidance and support, as well as to raise awareness, IFLA has created a [IFLA Digital Unification Working Group](#). This has collected examples of projects, and will produce a toolkit in order to help libraries and others worldwide facilitate digital reunification, and so the access of peoples to all of their heritage.

Libraries continue to develop guidance on the treatment of the **heritage of indigenous and marginalised communities**. There is a growing body of experience on how to respect and engage these communities and build strong relationships.

This work passes, in particular, through IFLA's [Indigenous Matters Section](#). This section's work, in line with Articles 31 and 34 of the [UN Declaration on the Rights of Indigenous Peoples](#) and the recommendations of the Special Rapporteur, has helped provide guidance on how to engage indigenous communities in the process of identification, selection, classification, interpretation, preservation/safeguard and development of cultural heritage.



Finally, libraries are highly engaged in efforts to ensure that cultural rights are not lost in times of conflict or disaster. With cultural heritage being abused for political propaganda and destroyed (or stolen) to serve certain agendas, the protection of cultural heritage has never been more important. IFLA works together with UNESCO and the **International Committee of the Blue Shield** to raise awareness of the need to act, and offer guidance and support.

1.2 – The Right to Benefit from Scientific Progress

Ensuring access to scientific research is a core function of libraries. In line with the recommendations of the Special Rapporteur's report to the 2012 General Assembly, IFLA is active in supporting sustainable and accessible open access, drafting its own [Open Access Statement](#) in 2011, signing up to the [Berlin Declaration](#), and [The Hague Declaration](#). IFLA also offers a space for global discussion on key issues facing the open access movement, notably around fairness and how to make it work worldwide.

On the ground, librarians educate faculty and administrators about the evolving scholarly communication environment and often host open access repositories which and to help faculty and students share their research outputs. IFLA also advocates extensively for universal internet access, underlining the strong potential of connectivity through public access centres such as libraries, which offer both a neutral space and committed staff. Copyright considerations are addressed further down in this document.

1.3 – The Right to Freedom of Artistic Expression

Libraries are increasingly aware of their role in encouraging creativity, in addition to supporting access to culture. In addition to creative writing programmes, libraries are supporting journalism, 'making', and other activities that involve the enjoyment of artistic and creative freedom. The fact that they can offer a physical space, open to all and without commercial pressure, makes them particularly valuable in this regard.

Increasingly, IFLA is focusing on the importance of freedom of expression as a vital complement to freedom of access to information, and has a [committee](#) dedicated to these parallel objectives. The importance of artistic freedom also feeds into our engagement on copyright issues (in particular limiting the liability of the internet intermediaries who have facilitated so much creativity).

1.4 – Equal Cultural Rights for Women

IFLA is active in supporting the cultural rights of women through the work of the special interest group on Women, Information and libraries. They have focused on the role of libraries in protecting [women's rights](#) in conflict or crisis situations, with papers looking at both past and contemporary situations, and underlining what libraries can do and are doing. [This summary paper](#) highlights the key cases shared.

1.5 – Writing and Teaching of History

IFLA also raises awareness of the role of libraries in supporting a responsible and critical approach to history, contributing to the promotion of mutual respect and understanding. The [Special Rapporteur recommends](#) relevant stakeholders, such as IFLA, to promote critical thinking on past events by ensuring that memorialization processes are complemented by measures fostering historical awareness. IFLA's sections frequently focus on such questions in their conference sessions, while libraries on the ground



contribute to [building, rebuilding and maintaining peace in their communities](#). This takes place through understanding, promoting inclusion, allowing for healing, and ensuring remembrance.

There is particular attention in the library world to the question of classification of knowledge, and the impact of the choices made. These can shape the writing and teaching of history by including or excluding whole groups, or simply dismissing them.

IFLA has a key role in discussing and adopting classification standards, with its Cataloguing Section very active in proposing and developing rules, guidelines, and standards. In 2017, IFLA published the [IFLA Library Reference Model](#): A conceptual model for bibliographic information. In this work, IFLA reiterated the importance of users' needs and of reflecting critically on terms used. This process will allow for better classification, and so better access to information.

1.6 – Commercial Advertising and Marketing

Regarding the impact of marketing practices, a particular concern for IFLA is around violations of net neutrality. The prioritisation of certain internet traffic is doubtless an effective means of making a service more appealing to customers, but leaves other information in the slow lane. This risks leading people to choose certain content over others, and so narrowing the field of available culture. IFLA has worked extensively on promoting among its members a clear understanding of net neutrality rules by releasing a [statement](#) as well as a [toolkit](#).

More broadly, IFLA is concerned about the impact of increasingly sophisticated advertising practices on the way in which people seek and use information. For IFLA, a key part of the answer is information literacy, which includes the ability to evaluate information and identify potential motivations behind it.

1.7 – Intellectual Property Regimes

Copyright has had a decisive influence on the way in which the creative economy works today. As already underlined in 1883 when the first international law on copyright was agreed, it involves both exclusive rights and exceptions which should prevent the worst excesses that monopolies otherwise bring (under-production, over-charging, failure to take account of positive externalities, produce public goods or serve communities without buying power).

IFLA therefore advocates for copyright regimes with adequate exceptions and limitations for libraries and in order to allow them to deliver cultural rights. As the latest update of [Professor Kenneth Crews' study](#) (commissioned by WIPO) shows, copyright legislation in many countries around the world does not yet meet the necessary balance¹. In too many countries, for example, libraries do not even have the legal possibility to lend books – a key tool in their work to promote access to literature.

In order to improve this situation, there is currently an effort at the World Intellectual Property Organisation, led by IFLA, to pass a legal instrument that would require all signatories to provide a minimum set of exceptions and limitations to copyright, and to ensure that these have international effect.

¹ In 2017, only 102 out of 191 analysed countries had a preservation exception, 34 had an exception for research or study (28 of which are in the European Union) and 9 for inter-library loan. More examples are available in page 10 of the study



As we have already seen in the case of the [Marrakesh Treaty](#), legal instruments that promote rights with cross-border effect have a major effect on the provision of cultural rights, overcoming situations where a rightholder's decision not to publish in a particular country effectively represents a block on access. IFLA is working to promote implementation, notably through a [guide for librarians](#) on how to make use of the Treaty's provisions.

IFLA also engages nationally, and regionally, and on questions such as [copyright literacy](#) (in order to ensure that access is not being denied on the basis of misunderstanding of the law).

There are also questions around the fairness of the contracts offered by publishers, record companies, internet platforms and other intermediaries offer creators for the use of their works, as well as around the operation of collective management.

1.8 – Fundamentalism and Extremism

The well-documented case of the rescue of many of the documents held in the [library of Timbuktu](#) underlines the threat that fundamentalism and extremism pose to the ability of libraries to deliver on cultural rights. Governments can also be guilty of this. [Natalya Sharina](#), former director of the Ukrainian Literature Library in Moscow, was accused of inciting ethnic hatred due to the presence of books by a Ukrainian nationalist writer on the shelves (although she stated that these had been planted by the authorities). Attacks like the burning of Jaffna Public Library in Sri Lanka or the library of the University of Mosul underline to what extent libraries are a target for those who are intolerant to other ideas and cultures.

1.9 – Culture Promoting Human Rights

IFLA supports cultural initiatives which contribute to creating, developing and maintaining societies that respect human rights are supported. Model library programming responds to the recommendation of the Special Rapporteur, with provision of diverse collections and events programming which supports people to understand their rights and to respect the right of others.

2. Difficulties and Obstacles to Protecting and Promoting Cultural Rights

A challenge affecting all cultural heritage organisations is a lack of adequate funding for their work. The fire at the National Museum in Brazil followed years of neglect and under-funding. Reduced opening hours and closures of public libraries in the United Kingdom are also associated with steep cuts with little regard to the cultural rights of the communities they serve.

A further concern for libraries and archives is the perception of culture being mainly about buildings, objects and music, rather than documentary works. Literature is an essential component of world heritage, but tends to be the least well supported.

A third issue concerns a failure to take account of the shift to digital formats. This is reflected both in the slow progress towards comprehensive digital preservation strategies, but also the fact that laws do not always keep up. In particular, copyright continues to stand in the way of libraries' work to deliver on their missions. Libraries often cannot remove technological protection measures or ignore contract terms that prevent them from undertaking traditional activities.



Furthermore, [recent evidence from Australia](#) indicates that decisions taken by publishers are leading to the non-availability of eBooks in libraries in a number of countries. Even when they are on the market, it is not on sustainable terms for libraries.

Clearly it is also important to ensure that where major internet platforms enjoy market power, action is taken to protect the rights of creators and users. Care needs to be taken to use appropriate and proportionate tools – copyright for example is not always the answer.

PART III: LESSONS LEARNED AND THE WAY FORWARD

1 – Assessments of the Implementation of Law

We have not carried out any systematic review of the implementation of laws, outside of our work to monitor the [implementation of the Marrakesh Treaty](#), focusing on the extent to which countries are respecting the spirit and letter of the laws.

2 – Cooperation with Other Stakeholders

As a federation of associations and institutions, IFLA cooperates with actors at all levels, around the world. Our core work – supporting our members to provide the best possible services to their communities through the development of good practices, guidelines and standards – mobilises them to support the protection of cultural rights. In particular, IFLA works with its sixteen [Preservation and Conservation Centres](#) to ensure that library and archive materials, published and unpublished, in all formats, will be preserved and in accessible form for as long as possible.

IFLA also works closely with other organisations with shared interests, notably UNESCO and its national commissions and the World Intellectual Property Organisation (WIPO). We work closely with the University of Washington to monitor and analyse the situation of access to information (including access to culture and science) in the context of the UN 2030 Agenda. There is a strong partnership with archive and museum organisations in calling for better copyright rules at WIPO, and in promoting the importance of protecting heritage in times of crisis with the Blue Shield.

3 – New and Emerging Issues

All of the issues highlighted under the ‘challenges’ would merit further attention. A study on cultural rights in the digital age could offer an important opportunity to look holistically at the challenges faced. This could include issues both about preservation (digital legal deposit policies, long-term preservation of digital) and creation/access.

There could also be merit in looking at the state of creators’ incomes today. While much blame is placed at the doors of internet platforms, the distribution of revenues from publishers and collecting societies to creators could also be investigated as a key factor in understanding how best to support cultural production.

Other issues of concern could include self-censorship (which may affect all of creators, publishers and librarians). The results of this call for evidence, in terms of offering insights into the incorporation of cultural rights into national laws will be valuable.



4 – Further Actions by the Special Rapporteur

We already strongly appreciate the work of the Special Rapporteur and her team, and look forward to engaging further in future in studies and special procedures.