

Future of Libraries: What will Content and Services be in 2030?

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2030 Equal Access: To defend and promote readers and better-informed citizens

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Abstract:

The existence of limitations and exceptions (L&E) in domestic intellectual property legislation has helped improve and promote access to information and knowledge. However, such measures are still insufficient, and various issues are pending in terms of legislation (press clippings, orphan works, cross-border exchange, text and data mining, digital copies, digital preservation, big data, availability and exchange of audio books for blind users).

Paradoxically, and although technological developments have democratized access, commercial contracts and licenses and their associated costs make such access impossible for many citizens (imbalance: access and technologies). Worse still, technological restrictions due to contractual clauses create another major impediment. Contracts often include more restrictive terms than allowed for by L&E. Thus, the balance between public interest (access) and the interest of creators and authors (rights) is increasingly fragile. After the Berne Convention and its reinterpretations, the situation has become even more complex, with the balance leaning toward the rights and protections of authors and owners thanks to further agreements that expand and protect such rights and protections.

The goals of this presentation are to highlight unresolved problems; to promote coordinated actions at the regional and national levels that aim to place reforms that address the imbalance before our respective legislative bodies; to highlight the need for an L&E training program in order to strengthen the defense of access and promotion of creativity and; and to unify efforts to develop lobbying strategies that librarians should opportunely implement.

Keywords: Copyright - Limitations and Exceptions - Access to information - Chile - Latin America and the Caribbean.

INTRODUCTION

Throughout our existence, we have produced a wealth of information in different formats and for different audiences using a variety of platforms and with various different aims. Much has been written with regard to the above. It is true that technological advances have made it possible to disseminate and learn at a massive level, with a wealth of content and information contributing to knowledge, development and the understanding of people, who on making such information their own are better informed to make improved decisions that affect their quality of life and greater participation as active citizens in society.

For societies without any type of gap, the transformation of information represents an opportunity for citizens –readers and authors- who can freely access information without economic, technological and political constraints. As a result, their options for sustainable development and progress¹ are optimal, which influences their decisions and active participation in building the society they wish for themselves.

However, in a global economy, the balance is uneven and progress is not the same for everyone, and neither is it so fast nor so fair. While some manage to bridge information gaps, others are left behind.² In some cases, these gaps are inversely proportional to technological advances. For example, when rural workers manage to acquire a secondhand computer, they soon discover that the programs installed are outdated and do not allow access to certain applications: balance for some will always be fragile. For disadvantaged individuals without purchasing power or the necessary technology, or due to political restrictions do not even know what information is available and useful, it is essential to build a bridge that shortens the information gap: *the Library*.

The Library is an open and democratic space that brings together citizens, writers and readers, where information takes on the form of heritage and is disseminated to future generations, providing people with tools to develop skills that guarantee learning opportunities throughout their lives. It is a space in which the aforementioned balance is protected, defended and promoted, thus supplying the appropriate balance for readers and authors, the latter in their dual role of reader and creator, and all being citizens.

Most of those present here understand to some extent the development of national legislation and international treaties that govern intellectual property. In this context, there is an urgent need to search for balance between the protection of rights and the right to access through the provision of Limitations and Exceptions (L&E) providing for special situations of use. However, this process is slow compared to the speed with which new licenses, contracts, conditions and terms of use are incorporated, along with technological measures that restrict and complicate the environment. There is a staggering disparity between nations in terms of what is allowed, not to mention situations that have not yet been incorporated into our regulations.

And the scenario becomes even more complex when we consider publishing trends that may be just as fast and diverse, and which will make it difficult to predict the restrictions we shall encounter in the future in terms of the L&E we are advocating today. It is difficult to know what impact the changes now being discussed will actually have, as many belong to the world of print and, strictly speaking, that of copyright; however, they will have an impact in terms of open access and creative commons licenses, which we hope will help balance access in the coming years.

What future awaits libraries, their collections and services in the coming years? One that is promising to some and uncertain for others. As such, it is imperative that we address actions designed to balance the starting point by giving libraries the tools to defend and promote equitable access for all. If we remember that before we were owners of content, today access users and tomorrow, perhaps,

¹ 2030 Agenda for Sustainable Development, 2015.

² Key trend number 1 of the IFLA Trend Report.

supporters of applications and services ... we will lose content, perhaps access too, and be led to a different world.

Some of the developments that we studied years ago (virtual reality) have not yet been fully integrated into reading as viewed from a traditional concept; developments we see today for certain sectors of the public (audio books) which have not been massively integrated into reading. New generations of readers will be prepared if this and more happens: however, can we imagine the advocates of balance with respect to the limitations and exceptions that we require?

What will happen with creators and authors with rights and those with open access? If the latter are able to be legally consolidated in 2030, will there be special or mutually convenient laws? Or would we see, as is happening today, the malicious intent to restrict them either by extension or interpretation? Will the tendency be to pay or compensate for damages for lending a book? Could there be an unseemly intent to cause damage to exploitation? The answer is absolutely and certainly no.

In 2030, the Library will continue to be an on-site and virtual space, a haven of balance, fairness and trust, focused on the reader without distinction, seeking their satisfaction and development, and advocating balance so as to favor progress.

LOOSE ENDS

Some situations are comprehensively addressed by laws while others are addressed in a very limited manner or not at all. We advocate -under special circumstances, without adversely affecting the normal exploitation of the work and without causing undue damage³ – that the following be included in national laws and international treaties on L&E:

- Conservation and replacement
- Content in accessible formats for people with different capacities, and not only in the area of academia but also early childhood
- Digital legal deposits
- Public domain for orphan works that have an educational and research purpose
- Circumvention and neutralization of technological measures to implement L&E
- Exceptions and limitations for the electronic-digital environment
- Parallel imports
- Cross-border exchange
- Format migration, conservation
- Mining of texts and data for non-commercial use, big data
- Works that are the objective of withdrawal
- Digital preservation
- Inter-library loans
- Public loans, printed and digital
- Press clippings, news
- Reproduction, digital copy
- Legal safeguards favoring libraries and librarians
- Fair use (laws are slower than rapid technological changes)

Although progress has been made in terms of the aforementioned issues, contractual terms exist that hinder proper development, leading to unfair terms that confuse and restrict access:

³ Berne Convention, the Three-step test.

- It is abusive to cut off access to collections when people have been paying for subscriptions for years, particularly given the current global economic context. This must stop! Can we build a movement to raise awareness among large suppliers so as to guarantee perpetual access to that which has been paid for?
- It is important to prevent practices such as payment for public lending from becoming an accepted future regulation. Continuing along the lines of the 2030 Agenda for Sustainable Development, the public loan must be defended as a human right as it is an essential practice to ensure access to all information.
- Regulations must be put in place to punish the malpractices of licenses, contracts, terms and conditions of use that are abusive and restrictive and which even violate L&E. It is worth mentioning the study by The British Library that analyzed one hundred (100) contracts and found that they were more restrictive than the legislation currently in force. Unfortunately, the text of the report is not available due to the confidentiality provisions of such contracts.

For 2030, we should increasingly undertake studies in Latin America that highlight similar and new realities in order to align the defense of fairer legislation, aligning our domestic strategies for protection and promotion.

LEVELING THE PLAYING FIELD

Studies undertaken by Kenneth D. Crews for the World Intellectual Property Organization (WIPO⁴) provide overviews and insight into each country, making it possible to view the uneven development of L&E and not just at regional level.

If domestic development is slow and uneven, why not implement a regional strategy? These could be concerted actions, in terms of comparative law and practice, to encourage improvements to our legislation. There is undoubtedly a need to include colleagues and experts who can envision and anticipate the trends and the impacts that they may have so that legislation can embrace them or somehow leave certain doors and interpretations open, especially as today focus is being placed on content and access, rather than services, the latter being an area that the publishing industry is already planning, projecting and costing. Thus, could the budgets of our libraries support not only these new collections but also the associated services that are "tied" to them? Will we have not only the ability but also the capacity to train staff towards balanced access to these new developments? And if we have that capacity, will our users have the ability, in terms of the skills developed, to use and put into practice this new knowledge?

By 2030 and for many citizens, users and readers, the only place to do so will continue to be the **Library** with its collections and services.

Proposals:

a) Assessment of the current situation

- Build a technology platform that allows for a standardized approach to lifting limitations and exceptions in Latin America and the Caribbean. Result: ***A National Directory of L&E*** that highlights Libraries and Librarians in vulnerable situations and/or cases that can be replicated
- Identify experts on intellectual property and copyright. Result: ***Directory of specialists & tutors*** ©, formed as a support network for legislative discussion and the training of young professionals in strategies and best practices, identifying a ***National Coordinator***

⁴ See the studies of Kenneth C. Crews presented in 2008, 2014 and 2015, respectively.

- Register of domestic legislation, currently in force or being processed. Result: *Register of pending legislation* and an action plan for specific support
- Register of the institutions that benefit from L&E. Result: *Directory of beneficiary institutions* that are politically involved in the defense and promotion of Libraries and Librarians, eventual formation of a Support Network
- Compilation of cases where the actions of Libraries and Librarians represent an offense and/or best practices (L&E allow services to be provided). Result: *Indicators* (evidence/cases at local/regional level)

b) Implementation of actions

- Triangulation, through a specialists support network, of strategies and actions in countries where the legislative process is ongoing and/or on the verge of beginning. Prioritize those countries that are most defenseless, or those whose legislative process is more advanced
- Link up beneficiary institutions (libraries for the blind, disadvantaged communities, free access movements and organizations), coordinating their actions. In the absence of such initiatives, promote bi-national collaboration which, once its impact is proven, can be scaled up to regional level
- Draft evidence-based statements aimed at parliamentarians who are setting the defense of L&E
- Send support letters to congresses and parliaments at relevant times of the various stages of the legislative process, thereby generating a force and regional presence, with impact on national legislation. One way to boost what will be in the future a comparative right, is a progressive understanding of a movement towards the common good and civic progress
- Request from IFLA, with the support of FAIFE and CLM, letters of support sustaining the defense of L&E that is being discussed, these being documents that will strengthen the national support documents mentioned in the previous point
- Request from IFLA, through the National Libraries Bodies, Library Associations, Librarianship Schools and others, to provide support letters and declarations for the systemized defense and promotion within each country
- Request letters of support from relevant institutions at international level, and direct these jointly and at institutional level through national associations and international networks (such as the IFLA Copyright Network for Latin America and the Caribbean, REDLACDA), during the legislative process
- Strengthen the teaching of these subjects in librarianship schools, addressing not only the theory and knowledge, but also developing the soft skills needed
- Define strategies and action plans to develop an agenda at the level of local (municipalities) and national governments (Ministries of Culture and Education), in such a way so as to incorporate these issues into public policies, starting with those countries which have expressed their commitment to the 2030 Agenda

c) Promote, legalize and adhere to the *International Treaty on Limitations and Exceptions to Copyright and Neighboring Rights* of the IFLA (TLIB).

We have the justifiable right to aspire to an international treaty, a legally binding international instrument to enable a level playing field from the starting point,⁵ taking care of all those who, by 2030, are in a position of inequality and do not have the minimum information or the conditions that allow them to access it. This is a reality in which our continents have rather dissimilar political, economic and legal capabilities.

⁵ Justice as fairness: materials for a justice theory. John Rawls, 1986.

Much has been said about the case of research of the Ebola virus, where researchers in the affected African countries suffered from issues of inequality in order to investigate cases, and this was strictly due to economic constraints, which didn't allow them to access the wealth of information available. Countries in North America and Europe, however, could access such data. It was not a matter of capacity or skill, but simply purchasing power.

Is it possible to create a regional force to promote TLIB as an international treaty and that is able to prevail over European efforts to prevent it from becoming an international treaty?

Yes, because without a doubt the possibilities and conditions of Latin American and Caribbean readers and citizens to access information are inferior to their European counterparts; our per capita income is lower, technology infrastructure is in some cases quite precarious and legislation is deficient.

The aim of the proposed actions is to achieve equitable development and progress, where access to information and knowledge can be found at the same starting point.

BALANCED TRAINING

It is possible to implement change at the national level.

While knowledge of our laws and the particular clauses related to L&E is essential, it is crucial to evolve and take the next step: to understand how the aforementioned can be exploited to the benefit of users and readers.

Thus,

- a) *Training programs on indicators and best practices* are relevant for libraries and librarians;
- b) *Dissemination and promotion programs for beneficiaries* so that they take advantage of all available possibilities
- c) *Survey of good and bad practices*, the latter underlining the need for librarians to have legal certainty with respect to users and readers access
- d) *Chilean L&E*, sharing a successful case at Latin American level

At the international level, and based on the "*Impact of the copyright legislation in the Libraries of Latin America and the Caribbean*" IFLA LAC Integrated Project, it is possible to optimize training tools.

Implementation of an *IFLA Balanced Training Program in WIPO* and in all agencies that require it, as it is urgent to provide balanced training, starting from the definition and construction of content, and that training is carried out in both the defense of the rights of creators and intermediaries who market information, as well as the defense of the access rights of citizens and intermediaries to the libraries and archives that provide information. Once the program has been set up, present it through/based in National Library Associations.

We hope that WIPO will provide training with integrated content (pro access and pro rights) to all members of the public regardless of their roles and/or interest, as this provides an equilibrium to the issue of balance from its starting point. The goal will be to replicate this program and officially promote it in librarian schools and Ministries of Culture and Education.

What might happen in libraries in geographical areas of lesser impact or that are more remote, and which have less bargaining power, and lack the legislation or accords that in some way would endorse their professional practices? Worse still, and given their limited access to information, they do not possess the knowledge that would enhance their bargaining power, thus preventing them from identifying between what can and cannot be done to access and/or exchange information.

A timely program of regional, dynamic and sustainable training would allow beneficiaries to transit from perceptions and fears to certainties, resulting in pro access practices and routines. Better still, this could be used to make a political contribution to our Parliaments for the inclusion and improvement of Limitations and Exceptions, thus allowing us to continue this work over the next fifteen (15) years at least.

CONTENT

Based on the data collected in the assessment (L&E National Survey; Directory of Specialists; Register of Pending Legislation; Directory of Beneficiaries and Indicators) plus the questionnaire included in the Integrated Project, it would be possible to build an equitable and comprehensive training program, which could address the following (contents in the form of a preliminary statement):

- Consultancies
- Librarians Associations
- Legal basis; laws and treaties
- Libraries and archives
- Publishers and intermediaries
- Equilibrium: Limitations and Exceptions (L&E)
- Development and regional trends of: frameworks for regulations, editing/publishing and © and (cc)
- Fostering of creativity and reading
- Strengths and Opportunities/Weaknesses and Threats
- Introduction. Conceptual framework
- The Three-step Test; the Berne Convention
- Creative Commons Licenses (cc)
- Licenses, Contracts, conditions of terms of use
- Other actors
- Protection of authors and readers, all are citizens
- Support networks and international relations
- Collective management of rights enterprises. Repertoires

CONCLUSIONS

Faced by unresolved situations and laws that do not provide equal access, we must generate specific and coordinated actions at the regional level, which will allow us to defend and promote equality of access to information and knowledge, especially during the time when these issues are subject to legislative debate. More urgently still, if such debates only respond to traditional approaches and realities, without even a glimpse of digital realities, they are less likely to consider those accesses and services that are being constructed for five, ten or fifteen years in the future.

There is a need to present such actions in our legislative bodies with regional backing in order to provide strength and coherence to defense and promotion, so establishing that National Librarian Associations are not isolated entities, but a consistent and aligned collegiate movement aiming to *Transform Our World*.⁶

We must incorporate Librarianship Schools, from first-year students onwards, as these represent the replacement generations who will be responsible not only to provide services, but also to continue the defense and improvement of L&E.

A training program focused on the application of best practices with indicators promoted by IFLA, would allow for a uniform and sustained development that would shorten, as far as possible, the access gaps in our countries. This would also correct malpractices in favor of balance, and the clearing up of doubts and fears that restrict free access will be one of the objectives of this program and help boost regional collaboration and pro-activity. Like a lighthouse, the program must take into account the movements and trends that can turn into threats, and the opportunities to produce strategies and actions so that we may dream of arriving at 2030 with a just and wide range of E&L.

There is a need to join forces to insist that the International Agreement on Limitations and Exceptions of the IFLA becomes a reality for all non-profit and unrestricted access Libraries and Archives, along with the training program that will ensure equal access to library collections and services well beyond 2030.

What are my hopes for the future of libraries in 2030?

I hope that they will be virtuous and fair; with citizens who share the same opportunities to access and use of the services provided through resources that include at least one (1) Professional Librarian.

BIBLIOGRAPHY

ACUÑA, Óscar. Manual de derecho de autor para las bibliotecas de Chile. UNESCO, CERLALC. 2007. 84 p.

APEC. APEC-IPEG Survey on Copyright Limitations & Exceptions. Report on Copyright L&E in APEC Economies. APEC Intellectual Property Experts' Group. APEC. 2010. 200 p.

CERDA Silva, Alberto, RUIZ Gallardo, Claudio. Internet, copyright y derecho: opiniones contingentes. Santiago, Chile, ONG Derechos Digitales, 2010. 120 p.

CREWS, Kenneth D. Copyright law for librarians and educators: creative strategies and practical solutions. Chicago: American Library Association, 2012. 192 p.

CREWS, Kenneth D. Estudio sobre las limitaciones y excepciones al derecho de autor en beneficio de bibliotecas y archivos. SCCR/17/2. Geneva, OMPI. 2008. 479 p.

[http://www.wipo.int/edocs/mdocs/copyright/es/sccr_17/sccr_17_2.pdf]

CREWS, Kenneth D. Study on Copyright Limitations and Exceptions for Libraries and Archives. SCCR/29/3. Geneva, OMPI. 2014. 212 p.

[http://www.wipo.int/edocs/mdocs/copyright/en/sccr_29/sccr_29_3.pdf]

⁶ Transforming Our World: the 2030 Agenda for Sustainable Development.

CREWS, Kenneth D. Study on Copyright Limitations and Exceptions for Libraries and Archives: Updated and Revised. Geneva, OMPI. SCCR30/3. 2015. 453 p.

http://www.wipo.int/edocs/mdocs/copyright/en/sccr_30/sccr_30_3.pdf

EIFL. Draft Law on Copyright: Including Model Exceptions & Limitations for Libraries and their users. Based on WIPO Draft Law on Copyright and Related Rights (version 2005). Recommendations by EIFL. Work in progress. 2014. 52 p.

http://www.eifl.net/system/files/resources/201411/eifl_draft_law_2014.pdf

EIFL. The European Orphan Works Directive. An EIFL Guide. EIFL, 2015. 11 p.

http://www.eifl.net/system/files/resources/201408/eifl-ip_the_european_orphan_works_directive_guide_1.pdf

IFLA. Brussels Declaration on Trade and the Internet. Belgium, 2016.

http://www.ifla.org/files/assets/clm/brussels_declaration.pdf

IFLA. Declaración “Motores para el cambio: Primer Encuentro Iberoamericano sobre Derecho de Autor y Tratado de Marrakech”. Buenos Aires, 2015.

<http://www.ifla.org/node/9968>

IFLA. Informe de Tendencias. ¿Surcando las olas o atrapados por la marea? Navegando el entorno en evolución de la información. Percepciones del IFLA Trend Report.

http://trends.ifla.org/files/trends/assets/ifla-trend-report_spanish.pdf

IFLA. Las bibliotecas y la implementación de la Agenda de la ONU. (Conocida también como “La guía de incidencia política/Advocacy toolkit). 1ª versión. IFLA, 2015. 22 p.

<http://www.ifla.org/files/assets/hq/topics/libraries-development/documents/novtoolkitspanish.pdf>

IFLA. Tratado sobre Excepciones y Limitaciones para las Bibliotecas y archivos. Versión 4.3 de 05 de Julio de 2012. 24 p.

http://www.ifla.org/files/assets/hq/topics/exceptions-limitations/documents/traduccion_espanol_texto_propuesta_tratado_iflajuno2012.pdf

NACIONES UNIDAS. Transformar nuestro mundo: la Agenda 2030 para el Desarrollo Sostenible. UN, 2015. 40 p. http://unctad.org/meetings/es/SessionalDocuments/ares70d1_es.pdf

NISO. NISO Consensus Principles on User’s Digital Privacy in Library, Publisher, and Software-Provider Systems (NISO Privacy Principles). 2015. 11 p.

http://www.niso.org/apps/group_public/download.php/16064/NISO%20Privacy%20Principles.pdf

OKEDIJI, Ruth L. The International Copyright System: Limitations, Exceptions and Public Interest considerations for Developing Countries. International Centre for Trade and Sustainable Development (ICTSD). UNCTAD Issue paper n° 15. March 2006. 64 p.

http://unctad.org/en/docs/iteipc200610_en.pdf

OMPI. Reseña de convenios, tratados y acuerdos administrados por la OMPI. Ginebra, OMPI, 2001. 47 p.

ONG Derechos Digitales. Acceso a la cultura y derechos de autor. Excepciones y limitaciones al derecho de autor. Santiago, Chile, Ford Foundation, (2008). 156 p.

<https://www.derechosdigitales.org/wp-content/uploads/libro-acceso-a-la-cultura-y-derechos-de-autor.pdf>

PARLAMENTO Europeo. Directiva 2012/28/UE del Parlamento Europeo de 25 de octubre de 2012 sobre ciertos usos autorizados de las obras huérfanas. 2012. 8 p.

<http://eur-lex.europa.eu/legal-content/ES/TXT/PDF/?uri=CELEX:32012L0028&from=EN>

RAWLS, John. Justicia como equidad: materiales para una teoría de la justicia. Madrid, Tecnos, 1986. 2174 p.

RAWLS, John. La teoría de la justicia. México, Fondo de Cultura Económica, 1979. 654 p.

RUIZ Gallardo, Claudio. Guías legales bibliotecarios. Santiago, Chile, ONG Derechos Digitales, 2010. 78 p. [https://www.derechosdigitales.org/wp-content/uploads/Guias_Legales_Bibliotecarios.pdf]

UNDP. Our Right to Knowledge: Legal Reviews for the Ratification of The Marrakesh Treaty for Persons with Print Disabilities in Asia and the Pacific. 2015. 110 p.

[http://www.asia-pacific.undp.org/content/dam/rbap/docs/Research%20%26%20Publications/hiv_aids/rbap-hhd-2015-our-right-to-knowledge.pdf]

VILLARROEL, Luis. Creando derecho. Guía para comprender el derecho de autor. Santiago, Chile.