

# The internet is global – but copyright exceptions stop at the border

Why we need an international treaty  
for cross-border access to knowledge

**EVIDENCE AND EXAMPLES FROM  
LIBRARIES AND ARCHIVES AT WIPO**

Compiled by EIFL November 2016



eifl



## ABOUT EIFL

EIFL (Electronic Information for Libraries) is a not-for-profit organization that works with libraries to enable access to knowledge in developing and transition economy countries in Africa, Asia Pacific, Europe and Latin America. In a highly networked digital world our activities help people access and use information for education, learning, research and sustainable community development. We build capacity, advocate for access to knowledge nationally and internationally, encourage knowledge sharing, and initiate pilot projects for innovative library services through programmes on Licensing, Copyright and Libraries, Open Access and Public Library Innovation.

## ABOUT COPYRIGHT AND LIBRARIES (EIFL-IP)

The goal of the Copyright and Libraries programme (EIFL-IP) is to protect and promote the interests of libraries in copyright issues in EIFL partner countries. Our vision is that librarians are advocates for a fair copyright system and leaders in promoting access to knowledge in the digital age. We have established a network of copyright librarians in partner countries, we advocate for national and international copyright law reform, and we develop useful resources on copyright issues.

[www.eifl.net](http://www.eifl.net)

Comments and feedback are always welcome. Please email [info@eifl.net](mailto:info@eifl.net).

# Introduction

Digital technology has changed the world. Outdated laws prevent people from benefiting. Opportunities for search and resource discovery enabled by the Internet, national policies that support international research, and cross-border collaboration among scientists and scholars are driving demand for access to materials in libraries and archives around the world.

In addition, a shared language or a common history often means that a library or archive has content of high cultural and historical value to people in other countries.

But frequently libraries and archives cannot legally provide the information because copyright exceptions stop at the border.

The WIPO *Study on Copyright Limitations and Exceptions for Libraries and Archives* (2015) found that almost no country has addressed the cross-border transfer of information by libraries and archives.\*

This is why the library and archive community is asking for a treaty at WIPO – the main body that sets international copyright law – to solve real practical problems that we face in providing information services to people across borders.

Extensive evidence of information denied when exceptions stop at the border, or when licensing fails, has been presented by librarians and archivists representing thousands of institutions and millions of users at WIPO's Standing Committee on Copyright and Related Rights (SCCR).

In this booklet you will find highlights of statements made at SCCR in April 2014, June 2014 and May 2016 by libraries and archives on cross-border access to information.

**WIPO member states are discussing limitations and exceptions for libraries and archives at the Standing Committee on Copyright and Related Rights, which meets twice a year in Geneva. The power to resolve cross-border problems experienced by libraries and archives lies in their hands.**

**MORE INFORMATION** [www.eifl.net/eifl-in-action/advocating-library-treaty](http://www.eifl.net/eifl-in-action/advocating-library-treaty)  
[www.ifla.org/copyright-tlib](http://www.ifla.org/copyright-tlib)

\* [www.wipo.int/meetings/en/doc\\_details.jsp?doc\\_id=306216](http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=306216)

# Cross-border access to knowledge

## STATEMENTS GIVEN AT WIPO'S STANDING COMMITTEE ON COPYRIGHT AND RELATED RIGHTS (SCCR)

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## LIBRARIES

# IFLA International Federation of Library Associations and Institutions

“ In a world that is increasingly digital, there can be no more important over-arching principle than this: that cross-border uses are permitted for limitations and exceptions for libraries and archives, whether they be lending, preservation, or reproduction of copies.

The internet has no borders; therefore, the notion that libraries and our users should be forced to deal with well over a hundred national flavors of exceptions is unworkable, ludicrous, and a failure of the international copyright system. The proposed exception on cross-border uses may be the most important of all those being considered by SCCR since it underlies many of our core library and archive activities.

What is the problem? As we have often noted, libraries and archives seek the balance between users' and owners' rights that has been fundamental to copyright since its inception. What we lack, but desperately need, are clarity and the ability to operate effectively in the digital environment. I will give four brief examples:

1. a recent study undertaken by a Canadian academic found that 43% of a large body of research papers reviewed were co-authored by scholars from two or more countries: one paper, multiple authors, multiple countries with different copyright regimes is a recipe for confusion. As collaborative research and publications are now the norm, the lack of clarity and harmonization have become an increasing impediment and frustration to those who seek to advance and disseminate knowledge worldwide;
2. libraries need to lend and borrow to satisfy the information requirements of users for works not available for purchase or lying outside the scope of a particular library's mission; but as the Crews study demonstrated, many countries have no provisions for lending or document delivery; and even if all did create their own, different copyright exceptions, how would a librarian possibly keep abreast of rules in over 180 countries?;
3. librarians and archivists increasingly work across borders to re-assemble digital archival collections documenting the various diasporas that occurred throughout human history; but varying laws governing lending, preserving, and copying these geographically dispersed collections force archivists and librarians either to give up in despair or spend endless hours trying to determine, understand and cope with different countries' exceptions; and
4. many universities now have campuses in multiple countries, which challenges librarians, faculty and students to know what rules apply, as they move from campus to campus, for common activities like making copies for private use.

We remain completely mystified by the repeated assertions by some delegations that all of the problems we cite can easily be solved within the 'existing international legal framework,' or at national level. We see zero evidence to support this claim. As a colleague noted at a previous SCCR, nothing, pre-Berne, prevented member states from setting copyright term for a period of 50 years after the author's death. But Member States recognized the importance of an international norm. We now call on this body to recognize and accommodate the importance of international norms governing our cross-border activities.

[IFLA statement delivered at SCCR/32, May 2016](#)

# EIFL Electronic Information for Libraries

“ The collections of libraries and archives in one country often contain materials of unique cultural and historical significance to people in other countries due to national border changes, mass emigration, shared common languages, research interests and a host of other reasons. These materials collectively contribute to the cultural heritage of humankind and the building of intercultural understanding.

Take, for example, an Italian scholar researching the lives of the Quechua people in South America. Should they only have access to research materials in Italian libraries? They will get resources in libraries in Italy, but for the most part, the materials are only available elsewhere, e.g. in Peru, Bolivia, Ecuador.

Likewise, a person in the US studying Antonio Gramsci, the Italian politician and philosopher would certainly find material in US libraries, but just as certainly would need to consult many other materials by and about Antonio Gramsci held solely in Italian libraries.

A recent survey by IFLA's CLM showed that libraries receive requests for access to specialized items in their collection from a wide variety of countries. For example, libraries in Senegal get requests from Morocco, France, Guinea, Burkina Faso among others. Colombian libraries get requests for materials from Mexico, USA, Peru, France, Spain, Brazil, Argentina, Costa Rica, Uruguay and Venezuela.

In many countries, however, copyright exceptions stop at the border. They don't permit libraries to legally provide copies of documents to overseas libraries at the request of an end user.

I will provide one concrete example of a cross-border use. A PhD student in Estonia was undertaking comparative research in five Baltic and Nordic countries on historiographical narratives, i.e. a critical analysis of authentic source materials used in the writing of history. The student needed to consult articles and book chapters from c.1920 that are not available in Estonia. The university library sent electronic requests to libraries in Iceland and Norway that had the materials in their collections. But, due to copyright and licensing restrictions, the requests were refused.

How do we explain to today's generation that they must get on an aeroplane to consult, for bona fide research purposes, a chapter from a book published 90 years ago?

Finally we note that despite extensive schemes in Nordic countries, licensing did not facilitate this straightforward request. In addition, libraries in Denmark and Norway reported in the recent EU consultation on copyright, that cross-border access is not permitted under their Extended Collective Licensing schemes. In its comments, the National Library of Norway that has an Extended Collective Licence to provide online access to Norwegian literature said that 'the cross-border effect is halted as the cross-border effect is not compatible with EU law. We need an international solution to an international problem.'

[EIFL statement delivered at SCCR/27, April 2014](#)



I will talk about cross-border document delivery i.e. requests by library users for material not available in their home institution, or in any other library in the country. I will give two examples of requests denied due to copyright and licensing restrictions.

The first example is from a university lecturer in Armenia who wanted two chapters of a book on teaching using drama. The book was published in 1987, is out of print and not available anywhere in Armenia. The closest library with the book is 1,000 km away. The request was denied for copyright reasons.

The second example is from a patron at a US university who needed two pages from an early twentieth century literary journal found only at the British Library in the UK. But the Library was not allowed to send the pages to the US. In both cases, the users completely failed to understand the reasons.

I should note here that in 2012 the British Library, one of the world's largest research libraries, ceased its overseas copyright-based document service to protect the Library from claims of copyright infringement. The service was replaced by a publisher-approved licensing scheme. Data shows that the service, a lifeline for hard-to-find information for the research community, has fallen off a cliff edge. The number of satisfied requests fell by over 98% from 38,100 in 2011 to just 635 in 2015. The number of countries served fell from 59 to 26 during this time.

Librarians in the EIFL network, who benefit from low cost access from publishers which is most appreciated, began to complain that they could no longer get other articles their users wanted or they were too expensive, for example, an article requested by a library in south-east Europe cost \$80. The question is where are people going now for that information?

Some may be availing of initiatives by publishers to broaden access, such as pay-per-view and other direct delivery options. But for many individuals, pricing is a barrier – a single pay-per-view article in a scientific journal costs around \$40. I invite you to check prices online for yourselves. And a publisher can license only the material for which they hold the rights. What about all the other material in libraries for which no licence is available? There must be a legal way to access this material.

A recent article in *Science* magazine on Sci-Hub, the world's largest unauthorized site for academic articles, reveals 28 million download requests over a six month period from all regions of the world and covering most scientific disciplines. A publisher is quoted in the article as saying 'It suggests an almost complete failure to provide a path of access for these researchers'.

Exceptions, and libraries as an established access channel, can help prevent illegal ways of sharing. Of course it's not the whole solution but it is, along with open access and other models, an important safety valve to relieve the pressure on a clearly pressured system. An exception as proposed in document SCCR/29/4 for cross-border uses for non-commercial purposes, made under an exception in national law, would provide such a safety valve. Is this not common sense?

[EIFL statement delivered at SCCR/32, May 2016](#)

# LIBER Association of European Research Libraries

“ Research shows that much of the best research in Europe takes place as a result of international, cross-border collaborations. Our information infrastructure must be globally oriented, and underpinned by a legal framework that supports seamless access to information and enables its exploitation for innovation.

The collaborative nature of research and the value of its results are increasing exponentially. This potential has been recognised in the G8 Open Data Charter of 2013. The Charter also recognises that international IP legislation must be observed. The Research Data Alliance, the brainchild of the G8, aims to facilitate international and interdisciplinary collaboration and recognises the importance of legal interoperability.

The cross border nature of many of the activities of libraries are many. To name but a few: interlibrary loan, licensing, the use of orphan works and out of commerce works, document supply, and the purchase of analogue information across borders. The national library of the United States, the Library of Congress, even has overseas field offices in Cairo, Islamabad, Jakarta, Nairobi, New Delhi and Rio de Janeiro for this purpose.

Therefore preservation, collection development, and sharing by large research libraries is by definition international and cross border. We also see huge growth in international research outputs. According to bibliometric data over 40 per cent of research outputs from France and Germany are from international research collaborations. Between 1990 and 2005, the UK saw collaborations with researchers in India, Australia, Canada and Germany grow from 50% with Germany, and up to 65% for India. Why then given all this cross border activity are library copyright exceptions not cross border in their effect? Education, culture, and this huge increase in international research and education does not take place in jurisdictional silos. In the context of cross-border research projects, it is only common sense that a medical researcher shares a new and pertinent research finding packaged in the form of a research article with his or her international colleagues working on the same project. National silos of limitations and exceptions do not clearly allow such activity.

It could be argued perhaps within Europe that levy-based private copying exceptions may allow this article to travel from Berlin to Vienna. But how does it work when this article travels to Canada where no such levies exist? Did the German legislature foresee this use in Canada, is it incorporated in the German levy calculations? How do German limitations and exceptions interplay with Canadian fair dealing exceptions? Are there obligations that Canadian laws place on the German researcher when making the copy? This example aptly illustrates why nation-based silos of limitations and exceptions leave libraries in an impossible legal position in the context of the cross-border learning and research environment we live in.

As we see starting to happen in the EU for certain limitations and exceptions, LIBER believes we need certain, specific, well-defined exceptions that facilitate the activities of libraries to be cross border in effect. Otherwise the massive investment of our respective member states in libraries, research and education itself is not being realized.

Complexity does not mean that we should not solve this problem.

[LIBER statement delivered at SCCR/27, April 2014](#)

“ The demand for access to knowledge is not confined to national borders.

Document delivery of analogue copies of journal articles or extracts from books or documents in response to research requests is a vital part of library cross-border activities. This service is made possible by national copyright exceptions for research or study. However, doing this internationally on the same basis has proved more difficult, especially now that digital delivery of soft copies is the norm.

In the European Union, a librarian in a Member State that has implemented Article 5(2)(c) of the Information Society Directive 2001 may legitimately make copies of copyright works within the terms of that exception. But were the copy to be sent to a researcher in another Member State which has not implemented that exception, that copy would be infringing.

Then license terms for electronic content come into play, since in most countries license terms may override national copyright exceptions and do not usually permit cross-border uses.

Despite the existence of some cross-border licensing schemes in geographically defined areas (such as FIZ Karlsruhe or Subito for Germany, Switzerland and Austria), take for example, a student in Freiburg, Germany wanting to consult an e-book held by another university library in the region, say Basel in Switzerland. The student finds that the e-book license prevents the Swiss library from making copies of the required pages and sending them across the border to Germany electronically, or in print, in response to the student's document supply request.

In this situation, the student has no choice but to take the train, at significant cost of time and money, to consult the e-book in person at the Swiss library, simply because of the artificial legal barriers. If it had been in hard-copy, the whole book could have been sent as an 'inter-library loan' and the student could have made the copies needed in Freiburg under a German exception.

The EU is trying to solve the problem of geo-blocking by introducing legislation for portability of access to content with regard to certain goods and services, within its internal Digital Single Market programme.

As far as cross-border uses are concerned, licensing alone clearly does not work for library users. EBLIDA respectfully suggests that SCCR establishes minimum international standards for copyright and cross-border uses of content, and that such uses are protected from override by contract terms. This would remove current restrictions on the legitimate flow of information across borders via libraries, archives, research and cultural heritage institutions and permit those engaged in not-for-profit learning, research and cultural activities to fully exploit the internet's potential.

[EBLIDA statement delivered at SCCR/32, May 2016](#)

# ALIA Australian Library and Information Association

“ It’s a long way from Australia to this room in WIPO. But Australian libraries do not exist just in our small corner of the world. We have known for a long time that Australian libraries face challenges, especially in cross-border projects, so in preparation for this SCCR, we surveyed a cross-section of our libraries to get some hard evidence of the scale of the problem.

Of the 15 libraries and two consortia surveyed, every single library participated in cross-border collaborations. Every single library participated in document supply/interlibrary loan, and in just those 15 libraries they dealt with 77 countries, requesting and supplying content.

Unfortunately, a majority of those libraries surveyed had also had requests from overseas institutions refused for copyright reasons, even though those requests were made in accordance with Australian copyright law, and even though for some requests the material was not available from any other source. As a legacy of our colonial heritage, many documents relating to Australia, our governance and heritage reside overseas, especially in the UK. To this day even our National Library has been unable to digitise or get access to digitised copies of some microfilm of official documents relating to Australia and the Pacific that are in archives and offices in the UK.

[ALIA statement delivered at SCCR/27, April 2014](#)



International document supply is an essential information service. A survey of 15 libraries in Australia showed that every single library participated in cross-border collaborations. SOURCE T. Hepworth.

## Karisma Foundation Colombia



The existing copyright regime does not work for an increasingly interconnected world. And the problems that libraries, archives and their users face everyday have an indisputable cross-border character. Let's look at three examples.

In 2014, the Harry Ransom Center at the University of Texas in the United States acquired the personal archive of Gabriel García Márquez, the Nobel Laureate writer from Colombia. The archive is made up of more than 75 boxes of documents, including draft manuscripts of published and unpublished works, correspondence, 43 photographic albums, 22 scrapbooks, research material, notebooks, newspaper clippings, scripts for movies, the final typewritten copy of *One Hundred Years of Solitude* and an unfinished novel. Part of this collection will be digitized in the future.

As you can imagine, this collection is of great interest to Colombian academics, writers, historians and scholars of the work of García Márquez. There are two options to those who want to view and access this collection. First, they can travel to Texas to consult the collection in person, or they can make a request for information to be provided via a local institution.

The truth is that the cost and time of travelling is not a feasible option for many researchers in developing countries such as Colombia. Instead, the cross-border supply of materials should be considered as the simplest alternative. But the current legal environment is a major obstacle to this option by unequal and disparate national copyright laws. As a result, we are allowing legal obstacles to hinder the study of Colombian national history, the production of new content and intellectual production, and the preservation of national historical and cultural heritage.

In another example, legal barriers prevented the National Library of Colombia from sending a copy of a score of a musical work to a user abroad, because the library didn't have permission of the author to digitize the work and supply it.

An academic library was prevented from providing a work to a PhD student for his doctoral thesis because although the work was out-of-commerce, the licence paid by the institution only allowed 30% of the work to be copied. Although the library had a licence, it was insufficient to meet the needs of researchers.

Therefore, there is a cross-border problem which requires an international solution. And this Committee can help researchers to nourish their doctoral theses with the knowledge contained in libraries and archives anywhere in the world, and that the unfinished novel of Gabo, as Gabriel García Márquez is affectionately known in Colombia, will not be the last story told by the Colombian writer in his land.

[Karisma Foundation statement delivered at SCCR/32, May 2016](#)

# DBV German Library Association

“ Complexity is no reason not to try to solve a problem. On the contrary, in the interests of education and research, complexity increases the need to make the system easier to use. I will give two examples from Germany relating to document delivery.

A special library with a collection of scientific and technical reports not available in other countries, receives requests for items such as book chapters, journal articles and reports from institutions and individuals around the world for research and study.

The library pays remuneration to collecting societies, within the German legal framework, and is able to provide an estimated 600 items to North America, 500 to EU countries, and 100 items to other countries per month. But because of legal uncertainty, they are unable to supply information in 30% of all requests which is a huge problem for science and technology research because the reports and other material requested are not available anywhere else.

The second example is from a distance learning university, such as the University of Hagen, that has students enrolled from all around the world. Distance learning is a growing phenomenon. While there is a national exception in Germany for document delivery, for the students who live outside the country, there is no such provision. So sending documents from the university library to the students constitutes at least a legal limbo.

Negotiating individual licences to send copies to students in other countries is administratively cumbersome, if not impossible. Imagine a student in São Paulo, Nairobi or Bangkok who is studying machine engineering at the University of Hagen, Cambridge or MIT? Don't they need the same documents as students on the university campus? We believe that all students should be treated equally.

The representative of the International Federation of Reproduction Rights Organizations (IFRRO) mentioned existing licences on distant learning and cross border delivery.

But a few individual licences won't help. You have to take into account that we speak of hundreds of different licences for electronic resources, not to mention resources that exist only in paper format. There is no way to license all these materials for international delivery.

The delegate of the International Publishers Association (IPA) spoke about the complexity in providing resources to students. How can an individual library be expected to resolve these problems with hundreds of rightsholders, each with their own business model and individual licences containing up to 20 pages of licensing terms in very small writing? (Many rightsholders also prohibit sending copies within the borders of the same country).

To make cross-border-delivery and distant learning more just, an internationally harmonized framework is needed.

[DBV statement delivered at SCCR/27, April 2014](#)

# CILIP Chartered Institute of Library and Information Professionals UK

“ Most UK universities have overseas campuses or Partnerships with foreign universities and colleges, whereby students earn UK degrees taught overseas without leaving their home country. This generates significant demand for cross-border information transfer and access to digital resources held by UK university libraries. The different licensing contracts for the UK library’s commercially purchased online information resources mostly restrict access by Partnership staff and students, including access via the library’s secure Virtual Learning Environment.

Many of these licensing contracts also override copyright exceptions, for example by preventing the library from furnishing electronic copies of documents across borders to Partnership staff and students in response to ad hoc requests that would have been permitted under the UK’s non-commercial research or private study exception.

Partnership staff and students are significantly disadvantaged: they need the same access to the same digital materials as their UK counterparts for teaching and learning on the same courses, but serving them generally requires express permissions, extra licence provisions, and additional fees costing a typical 30% extra on top of a library’s e-journals and database licence spend. The rapidly increasing use of academic e-books in place of traditional printed academic textbooks will simply exacerbate this situation.

[CILIP statement delivered at SCCR/27, April 2014](#)

“ At SCCR27 library and archive delegations presented a raft of real life examples demonstrating our patrons’ expectations for cross-border digital information services and the dysfunction experienced by our institutions in their attempts to deliver. The examples demonstrated that this dysfunction is due either to the uneven provisions for library and archive copyright exceptions and limitations from country to country, or by terms of licensing contracts for digital knowledge goods that override national exceptions. How is that to be fixed, if not internationally?

These content licences are an essential component of digital information services. They are international in scope but often apply the laws of a country other than the licensee’s and they routinely override national copyright exceptions and limitations, including their own. Legislation is now in force in the UK to protect many of its exceptions from override by contract terms. Why? The answer lies in a statement by the UK Minister for Intellectual Property, Lord Younger of Leckie, to a Parliamentary Committee in which he said ‘In fact, it is fair to say that if any law came in and a contract was to override the law, that would make a bit of a mockery of the law. The advice that we have received is very clear on that.’

Europe’s own needs for updating its copyright exceptions for the cross-border digital environment very much reflect those of the rest of the world. Just yesterday, Neelie Kroes, Vice-President of the European Commission, gave a speech entitled ‘Our Single Market is Crying Out for Copyright Reform’ in which she enumerated principles for the EU’s copyright system to address including ‘last, perhaps most importantly, the legal framework needs to take account of the needs of society. Users’ interest and expectations matter alongside creators’ rights.’ She went on to say ‘the solution is already staring us in the face. It doesn’t even have to be about principles – it’s about aligning with current practices, with what most people are already doing.’ Her message is – be pragmatic.

Libraries and archives' quest for international solutions to allow us to deliver our digital services effectively, is about the practical needs of the patrons we serve: the children, the students, the teachers, the researchers and the general public, who are losing out on the huge potential for education, research and consequent economic development that libraries and archives could deliver online across national borders impacting positively on millions on people – because there is no level playing field for exceptions and limitations in the digital environment.

Exceptions for the digital environment are just as essential to the international copyright legal framework as are rights: they too need updating and protection from contract override on an international basis to deliver the global library and archive digital services that people everywhere actually want.

[CILIP statement delivered at SCCR/28, June 2014](#)

“WIPO should take the lead on the issue of limitations and exceptions to copyright for libraries. Areas that need to be addressed include the cross-border transfer of works.”

KENNETH D. CREWS, AUTHOR OF  
WIPO STUDY ON COPYRIGHT  
LIMITATIONS AND EXCEPTIONS FOR  
LIBRARIES AND ARCHIVES

## ARCHIVES

# ICA International Council on Archives

“ The material in archives is hugely valuable, but that value is largely cultural not economic.

Consider for instance the personal letters to their families of soldiers in the trenches in the First World War, now deposited for public access in archives. Those soldiers came from many countries of the world: from the UK and what were then its colonies and dominions, from Germany, from France, from the USA.

Can you really contemplate, in this centenary year, a researcher for a new history of that War being unable to consult such material, now kept in all those countries? It cannot be licensed. No-one could represent the multitude of rights owners in the unpublished materials that make up the majority of archival collections, so the suggestion of rights owner NGOs that their licensing solutions could provide an answer is wholly mistaken. Instead archives need an exception that clearly permits them to make material available across borders to individual researchers and archival institutions.

[ICA statement delivered at SCCR/27, April 2014](#)

“ There are two principal kinds of use of archive material that involve cross border transmission.

One of these is research, whether academic or personal. The other is the pursuit of legal rights, such as those relating to nationality, identity and property. Both will in many cases require cross border activity, since the sources will be in other countries as a result of migration, trade or conquest.

Here are two examples. In 2015 the Government of France released the archives of its counter-intelligence service in Indochina in the 1950s. Clearly, the researchers and the individuals interested in investigating these records will mostly be in Asia, not in France.

Another example is the creation of an archive of photography by the School of African Heritage in Benin. This is a rescue programme for photographic archives collected from 26 African countries.

If prospective users of archival collections like these are to be permitted to do so in their own countries, rather than to travel long distances, they need copies.

It is undeniable that international law allows individual states to introduce exceptions and limitations to copyright that permit such copying. What happens though when those copies are sent to a state where the requirements of an exception are different and the copy does not meet those requirements? It is unlikely that anyone will be sued for an infringement of this sort, but that does not make it right nor does it help the archivist or the user wishing to act lawfully.

There are two possible outcomes: the archivist declines to supply the copy for fear of infringement or the archivist decides to ignore the law. Neither of these outcomes is good for the law or for the interests of rights owners or users.

The alternative means acceptance that archive services cannot be cross-border or that they will be provided regardless of the law. A solution for archives need not be complex, if all states were to recognize the legitimacy of a copy lawfully made by an archive in another Member State.

[ICA statement delivered at SCCR/32, May 2016](#)

# SCA Scottish Council on Archives

“ Archivists need to be able to supply copies across borders. Primary Research Group Inc. published the International Survey of Institutional Digital Repositories in early May 2016. They found that, for US-based repositories, 27% of downloads came from countries other than the US or Canada. In the UK, the Chartered Institute of Public Finance & Accountancy have recently released the results of the 2015 Distance Enquiry Survey for local government archive services. They found that 19% of the respondents who have used enquiry services at UK archives lived outside the UK.

Funding within higher education is increasingly awarded to international consortia of research-intensive institutions. Partnerships working across multiple countries and multiple institutions is now business-as-usual.

Of the 188 states included in Crews study on limitations and exceptions for libraries and archives, only 61 states have exceptions for research and private study that include the copying of archival documents. This means that cross-border supply of archive materials for research and scholarship will often result in infringement: but how can infringement, however harmless, be the mark of a well-functioning copyright system? It's not functional: it's dysfunctional. The uncertainty this creates is a burden for archivists and our users, and does nothing to maintain or improve the reputation of the law. Indeed, it creates an unnecessarily negative perception of the law, especially for our users.

Archivists respect the law. We agree with the International Council on Archives that recognition of the legality of a copy created by an archive in a member state would be sufficient to address the problem. An international treaty is the preferred instrument because archivists and the organisations that provide them with funding, need predictability and consistency when working in a global context.

[SCA statement delivered at SCCR/32, May 2016](#)

# SAA Society of American Archivists

“ Since archives by their very nature consist of unique documents, nearly all archives worldwide face the problem of cross-border requests for copies.

I will give two examples. Just two weeks ago, my archives received a request from a Polish historical museum interested in our collection of US posters promoting Radio Free Europe in the 1950s and '60s. To connect with their own displays on Polish emigration in the Soviet Era, the museum sought images to reflect the anti-communist message enticing the East European population to emigrate. Their first question – do we have any such posters – was easily answered by a resounding yes, but their follow-up questions were not.

‘If you have such posters, is there any way for us to research them? Can you send preview photos? How do we obtain copies and a license for our exposition?’ Without international norms on the right to provide copies to users, we are unsure of the legal environment for us to provide the documents across borders to help the museum meet its mission and us ours.

The second example is from 2013. Our archives holds a substantial collection relating to twentieth-century ‘classical’ or ‘art’ music. Last year a doctoral student from Cuba, studying composition in Madrid, was researching Latin-American composers writing new music for percussion ensembles between 1930 and 1960. Since one of our faculty members had made several innovations in the area of percussion ensembles, the researcher requested copies of some of this rare and unpublished music manuscripts. As material for a doctoral thesis, such copying should be more than appropriate. However, without a solid knowledge of Cuban law, Spanish law, and laws of several countries where our faculty member gathered some of the music, this rather standard request became a significant challenge. As historical curators, we should not have to be doing such legal research and making such decisions.

Obviously, neither of these requests involved items made for commercial use, but copyright law assumes commerce. This puts archivists and copyright at loggerheads. Archivists must continue preserving culture and enabling accountability, but traditional copyright’s disproportionate focus on revenue potential makes it increasingly impossible to fulfil our essential mission. Something must be done to enable our two worlds to work together. As archivists committed to best practices and respecting rights, the SAA hopes the good faith of SCCR will find the way to enable our two worlds to work together.

[SAA statement delivered at SCCR/27, April 2014](#)

“ Whether through wars or natural disasters, the cultural and political documents of one nation often reside thousands of miles away. Internet access can solve this problem, but today’s copyright laws make most cross-border delivery of such documents illegal. If you cannot travel internationally, your own country’s heritage may be inaccessible.

This no longer makes sense. The first principle for archives is that we must make our materials available. In today’s world, if materials are not available digitally, they might as well not exist.

The second principle is that most archival materials were never created for commercial purposes despite being valuable cultural and scientific documents. Because of the very nature of such records, there can be no viable collective licensing for the billions of virtually anonymous authors found in today’s archives.

The third principle is that archives, by definition, hold rare or unique works available nowhere else. Thus, we must make them globally accessible, usually through digital tools. To do otherwise betrays the public's trust.

These principles put us in copyright jeopardy when it comes to cross-border sharing of archives. For instance, my university holds the archives of a Dutch anthropologist who was the leading twentieth-century expert on pre-Columbian Incan society. He also made extensive microfilms of local church records in the Chuschi district of Peru when researching intermarriage between colonizers and the native population. Because many of those churches and their original records were destroyed by later civil wars, his microfilms now may be the only copies existing anywhere. Where would a licensing collective find the rights for these records? Yet, as their custodian, I must be able to ensure that these apparently unique records can reach their rightful constituents half a world away. Their information needs are borderless.

The necessary technological tools have existed for over 25 years, but national copyright laws have not kept pace, and it would be absurd to argue that licensing can fill the gap. Without the kind of cross-border exceptions only an international treaty can provide, we cannot help the millions of people worldwide who need archives for preservation and heritage. Answering user requests and placing 'never-in-commerce' documents on websites must be permissible across borders.

Archivists want to fulfil our mission without being deemed criminals. Copyright was not meant to lock up material never created for the commercial market. Cross-border exceptions are nothing more than common sense. Why should anyone deny this?

[SAA statement delivered at SCCR/32, May 2016](#)



2016 WIPO Assemblies

# Who are we?



## Australian Library and Information Association (ALIA)

The Australian Library and Information Association (ALIA) is the professional body for the library and information sector in Australia. For 77 years we have been representing individuals and institutions in all types libraries, from the National Library, through to public, academic, state, specialist, school and government libraries.

<https://www.alia.org.au>



## Chartered Institute of Library and Information Professionals UK (CILIP)

The Chartered Institute of Library and Information Professionals (CILIP) is the main UK professional association for some 14,000 librarians, information and knowledge managers. CILIP is convenor of the Libraries and Archives Copyright Alliance, an umbrella advocacy group for the UK's major library, information and archive associations and institutions.

<http://www.cilip.org.uk>



## Electronic Information for Libraries (EIFL)

EIFL (Electronic Information for Libraries) is a not-for-profit organization that partners with libraries in 55 developing and transition economy countries in Africa, Asia Pacific, Europe and Latin America to enable access to knowledge.

<http://www.eifl.net>



## European Bureau of Library, Information and Documentation Associations (EBLIDA)

EBLIDA is an independent umbrella association of library, information, documentation and archive associations and institutions in Europe. We promote unhindered access to information in the digital age and the role of archives and libraries in achieving this goal.

<http://www.eblida.org>



## German Library Association – Deutscher Bibliotheksverband (DBV)

For 65 years the association has represented the interests of libraries and their users in Germany. Through its intensive contacts to all political levels it strengthens their role in society.

<http://www.bibliotheksverband.de>



## International Council on Archives (ICA)

The International Council on Archives (ICA) is dedicated to the effective management of records and the preservation, care and use of the world's archival heritage through its representation of records and archive professionals across the globe.

<http://www.ica.org>



## International Federation of Library Associations and Institutions (IFLA)

The International Federation of Library Associations and Institutions (IFLA) is the leading international body representing the interests of library and information services and their users. It is the global voice of the library and information profession.

<http://www.ifla.org>



## Karisma Foundation – La Fundación Karisma

The Karisma Foundation is a civil society organization located in Colombia dedicated to encouraging the good use of digital technologies, and supporting public policies in Colombia and the region from the perspective of protecting and promoting human rights.

<https://karisma.org.co>



## LIBER (Association of European Research Libraries – Ligue des Bibliothèques Européennes de Recherche)

LIBER (Ligue des Bibliothèques Européennes de Recherche – Association of European Research Libraries) is the main network for research libraries in Europe.

<http://libereurope.eu>



## Scottish Council on Archives (SCA)

The Scottish Council on Archives (SCA) provides leadership for the archives and records management sector in Scotland. We build national and international partnerships, deliver strategic advice and research, and develop projects spanning stakeholder engagement, education, and quality improvement.

<http://www.scottisharchives.org.uk>



## Society of American Archivists (SAA)

Founded in 1936, the Society of American Archivists is North America's oldest and largest national professional association dedicated to the needs and interests of archives and archivists.

<http://www2.archivists.org>



Representatives of global library and archive organizations advocate for cross-border access to information for education, research and development at WIPO's copyright committee (SCCR/27), April 2014



The 14-strong team of librarians and archivists provided examples and evidence from around the world in support of cross-border access to knowledge at WIPO's copyright committee (SCCR/32), May 2016

“People expect libraries and archives to provide information to them irrespective of location; yet when exceptions stop at the border and libraries cannot legally provide the material, people are denied access to information.”

STATEMENT BY IFLA AND EIFL,  
2014 WIPO ASSEMBLIES





eifl

[www.eifl.net](http://www.eifl.net)