



IPA and STM Statement in Response to the IFLA Draft Treaty on Exceptions and Limitations for Libraries and Archives

IPA and STM have had the opportunity to review the IFLA draft treaty Version 3.0 of 5 April 2011 (“the Text”).

IPA and STM strongly believe that addressing underlying problems and progress on practical issues would require as a first step careful factual identification and analysis. Given the diversity of issues they should be systematically grouped, the underlying facts explored and then addressed.

However, the Text presented is a forgone conclusion based on an unbalanced perspective on copyright. In its current form the Text is not a constructive basis to address concerns and does not even clearly state what these might be.

In particular the Text has the following flaws:

- The Text lacks any factual analysis of the challenges libraries face. Instead it surmises that the problems of libraries around the world are uniform and all resolvable by an international instrument.
- The Text undermines the consensus achieved in recent WIPO treaties.
- The Text does not allow any policy space to distinguish between different countries in different stages of development, different types of libraries and different legal traditions.
- The Text fails to define what a library is and does not distinguish between different types of libraries.
- The Text unites in a single document all possible exceptions from around the world, without regard for the balance that governments carefully weigh at the national level.
- Some clauses venture into areas that are outside copyright law, and change fundamental legal principles of contract, common and civil law

It is regrettable that the text does not reflect the consensus achieved and the progress made over many years on many of these issues, be it at national level or in stakeholder collaborative exercises in many of the areas where libraries face new challenges. It

appears as if IFLA were willing to renegotiate many points on which consensus exist to see if the current international climate lends itself to achieving something more.

IPA and STM recognise the important role that libraries play in providing access to literary works and complimenting the products and services offered by publishers. National libraries also perform many important public functions. In particular in developing countries libraries face great challenges in obtaining and making available valuable knowledge.

IPA and STM stand ready to work towards identification, analysis and solution of clearly identified problems jointly with libraries.

IPA and STM set out five guiding principles we believe should be applied in any consideration of these matters, once the factual identification and analysis has been completed:

- Building on the international consensus developed through the WIPO treaties
- Maintaining the fundamental principle of the territoriality of copyright, which means that in- and export of literary works requires authorisation by the author or other rightsholder.
- Maintaining the flexibility that the on-going developments in the digital environment require
- Maintaining the three-step-test