



# SCCR33, ITEM 6 – EXCEPTIONS AND LIMITATIONS FOR LIBRARIES AND ARCHIVES: Limitations on Liability for Libraries and Archives

## The Principle

Librarians should be able to fulfil their public interest missions in a responsible and prudent way without facing legal action and crippling costs if they make an honest mistake.

## The Problem

Copyright laws are complex, and in the fast evolving digital environment, can be rapidly outdated or obsolete. As such, they can find themselves exposed to copyright infringement while undertaking what they think is a non-harmful, permitted activity.

A perfect example of this is digital preservation: in the majority of countries around the world, existing copyright laws on preservation do not permit digital preservation. This can be because the law limits preservation copies that can be made to one or two copies (digital preservation requires multiple copies), or doesn't allow format shifting – in many cases, both! Of course libraries and archives are still undertaking digital preservation – they're mandated to. Unfortunately, they're also infringing copyright and could be held liable.

Libraries and archives may also find themselves inadvertently infringing copyright where:

- They have searched diligently for the right holders of (for example) a collection of letters between soldiers during the Korean War from the 1950s, before deciding to digitise them from a 50<sup>th</sup> anniversary online exhibition. A right holder then steps forward asserting copyright infringement and seeking payment for the digitisation of those letters.
- They have misunderstood the minutiae of a document supply provision, which limits supply to copies of published works – they provide a copy of a portion of an unpublished work to a researcher, who quotes from it in their output.

## The Solution

Libraries and archives are asking for a limit on liability for copyright infringement – where they are undertaking activities in good faith.



For further information contact: [Stephen.wyber@ifla.org](mailto:Stephen.wyber@ifla.org)

## Talking Points

- Librarians, while information professionals, are not lawyers. A complex legal framework such as copyright sometimes hinder effective library work due to a fear of copyright infringement (whether the fear is justified or not) or a lack of available information.
- Moreover, central parts of libraries' mission, such as preservation, can at the same time be in contradiction with the specifics of copyright law.
- Libraries do face legal action from rightholders – the threat of litigation is a real one.
- Libraries and archives undertake their activities in good faith. Introducing a limit on liability would help reduce uncertainty and stress which harms legitimate access to knowledge.