



International Federation of  
Library Associations and Institutions



“We call on governments worldwide to examine when and where digital licences create more problems than they solve. As a starting point, governments should protect limitations and exceptions to copyright law.”

## Licence Paralysis - Protect Copyright

*Imagine a world where every book on every shelf across the world had different usage terms and conditions - this is the reality of the digital world we now live in.*

Licences are part of the modern information ecosystem, setting the terms for how we use and reuse copyright works. However, **licences which override copyright law undermine and restrict creativity and innovation.** This is because access and the use of digital content is governed in nearly all countries around the world **not** by what national copyright laws say, but what a private and often confidential contract imposes. Replacing copyright law entirely with licensing restricts access to, and reuse of digital knowledge, and is hampering research and creativity.

- For libraries around the world, which store and provide access to millions of digital items, **licensing and contracts have become the norm.**<sup>1</sup> Libraries support open licences,<sup>2</sup> and they see the value in licences that are well-regulated and uphold copyright limitations and exceptions.
- Licences pose serious problems. Individual university, public and school **libraries often do not have the bargaining power to negotiate licensing terms** that meet their users' needs. This is even a challenge for universities negotiating as a group. Publishers have a monopoly over their content, and universities usually have no choice but to purchase it to allow research or teaching to continue.
- **It is vital that governments ensure that education, research, science and the public interest are protected from the information monopolies created by licences.** Otherwise, access to education and research, will be determined by the commercial interests of private companies with little or no concern for the wider needs of society.
- Information is not like any other commodity – it is the key to increasing knowledge and advancing society. **Information markets must be regulated fairly and evenly** to protect knowledge and allow innovation. Without this, the chain of creativity and innovation on which science and learning depends will be broken.

<sup>1</sup> In 2012 libraries spent \$24.2 billion on purchasing content. Much of this spend is on licensed digital content. (Outsell, 2013: <http://www.outsellinc.com/store/products/1153>)

<sup>2</sup> Libraries, particularly in the context of Gold Open Access publishing (a business model where the funder or author pays the publisher to publish an article in order for it to be distributed freely) support Creative Commons licences.

# What we believe:

1. **Copyright law nurtures innovation** and learning, and gives equal consideration to both the public and private interest.
2. The role of legislators is to design fair and balanced copyright regimes for the benefit of society, rather than in the interests of any individual corporation. Yet, when licences dictate all lawful uses of digital content legislators have little or no role to play in this equation.
3. **Fundamental rights** to education, health, a free press, scientific research and cultural heritage **depend on our ability to share facts and data**. It is copyright exceptions that, in part, uphold these basic rights and freedoms.
4. **Licensing simply doesn't work across the board**. Most unpublished materials, most websites, orphan works and much historical and grey literature<sup>3</sup> have no active or contactable licensor at all.<sup>4</sup>
5. **Thousands of publishers licensing digital content across the globe have created a sprawling jungle of licences** with individual contractual terms and conditions. It is impossible for librarians to understand, and help their users to understand, how to use content when each item carries different terms and conditions. The confidentiality of most licensing contracts also prevents library users from seeing details of the licences first hand.
6. With thousands of licences all operating at the same time, there are many differences and incompatibilities *between* different licences. This **complexity hinders researchers and creators, who benefit from simple, well-defined rules**. Copyright law, and its exceptions and limitations, create one clear set of norms.
7. **Licences impose a heavy resource burden in terms of cost and time**, with negotiations taking months or even years to complete.<sup>5</sup> For librarians and educators, the increasing amount of time spent on licensing diverts scarce resources from fulfilling their core mission, functions and key front line services. Copyright law, on the other hand, minimises costs by applying consistency and simplifying negotiations.
8. **Licences can encroach on ethical and legal norms** of freedom of expression and privacy that are hallmarks of the library profession. Licences may require libraries to monitor and report activity which would ordinarily constitute lawful use, or require a researcher to divulge what research they are doing to a publisher.
9. Licences and contracts are frequently based on specific national legal frameworks. When signing these licences libraries, as publicly funded organisations, are forced to expose their domestic institutions (often taxpayer funded) to foreign courts and judicial processes.
10. **Contracts regularly strip away the traditional flexibilities offered by copyright law**. In countries where copyright exceptions are being modernised, they will simply be overridden by contracts. This can be prevented by legally protecting copyright law from contract override – as the UK, Ireland, Portugal and Belgium have done.<sup>6</sup>

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3 Grey literature includes material produced by all levels of governments, institutions, businesses, individuals and societies which are not produced for commercial purposes.

4 There are some publishers who don't supply libraries with licences. How such content should be used is therefore unclear.

5 Contracts that are negotiated usually have to be re-negotiated every 2-3 years - a continuous cycle.

6 The European Software Directive and Database Directive also protects exceptions from contractual override.

For further information, contact: [stuart.hamilton@ifla.org](mailto:stuart.hamilton@ifla.org)