



# IFLA Statement on Contract Override

16 August 2025

## **The shift to digital: opportunity and challenge**

With the transition from physical to digital materials, libraries and their users have seen a significant expansion in the technological possibilities to access and use books, journals, and other materials. These hold the promise of broader participation, accelerated research, and better adaptation to users' needs- for example flexible formats to support accessibility, access to a greater diversity of content, and a solution for those who may not be able to travel. Moreover, digital formats represent a significant and growing portion of contemporary scholarship and cultural output.

However, this transition has also radically changed the market libraries face when seeking to build collections. In particular, the fact that digital materials are typically accessed under licence agreements too often requires libraries to waive the rights they would usually have with physical ownership, both on their own behalf and that of their users.

As a result, the space for libraries to work that exists under traditional limitations and exceptions can be lost in favour of minimal access. This includes possibilities to lend, preserve and provide enduring access- activities that are central to their role as long-term stewards of knowledge.

## **Disappearing guarantees of access**

This can put libraries in a difficult situation. They are working with materials that are not always easily substituted, and need to respond to legal mandates around collection building and/or pressure from users to purchase resources. While establishing consortia may help, this is not a complete solution.

Some countries make clear in law that contract terms cannot override some or all of the possibilities created under exceptions and limitations to copyright. At the same time, when faced with a different set of rights under legislation and contract, there is still a risk of confusion that can lead many libraries to take a more cautious approach.

Additionally, rightsholders also make extensive use of technological protection measures (TPMs) to manage and monitor usage, which can restrict legitimate research and access. In addition to the questions the use of such measures can raise around the chilling effect of surveillance of user activity, they can restrict the legitimate activities of researchers to the point that many will avoid works that use TPMs if possible.

While many countries – in law – do not offer any legal protection to TPMs that prevent licit uses, only a few provide a clear and simple pathway for removing or circumventing them, for example through ready access to relevant tools or rapid legal avenues obliging rightholders to do so.

## **Challenges to library practices**

While noting the inadequacy of exceptions and limitations regimes in many jurisdictions, particularly concerning phenomena include:

- Single-seat licensing, which can serve to exclude many library users from access to content, as well as refusals to licence to libraries, and a lack of transparency (in particular around platform costs);
- The explicit override of limitations and exceptions to copyright that exist in law, as well as exhaustive lists of permitted activities that do not include activities covered by limitations and exceptions;
- Use of ‘choice of jurisdiction’ clauses to apply foreign laws that restrict the possibilities open to libraries and/or deter library efforts to uphold their rights;
- The imposition of unlimited liability on libraries for the actions of their users (even when having provided clear and adequate information), as well as for incidents of exceeding licence terms while acting reasonably and in good faith;
- A lack of guarantees around the ongoing accessibility of content during the term of a licence (for example, due to withdrawals or unpredictable additions to a collection, or as a result of mergers, acquisitions or bankruptcies);
- The loss of access to content if a library changes platforms, or following the termination of contracts (in particular in the case of academic libraries).

In summary, the move from ownership to licensed access has eroded the guarantees libraries once relied on to serve their communities. Without legal safeguards, licences can be withdrawn, changed, or terminated without notice, leaving libraries, and their users, without access to essential knowledge.

This unpredictability undermines the ability of libraries to preserve cultural memory, support consistent educational programming, or ensure the right to research. When digital resources vanish due to a contract clause, the impact is not just administrative, it is felt by students who lose vital readings mid-semester, researchers cut off from primary sources, and communities disconnected from their own histories.

In contexts where physical access is already limited, digital disappearance can further entrench inequity. The erosion of these guarantees threatens the core mission of libraries as long-term stewards of knowledge and bridges to equitable access in the global information ecosystem.

As a result, IFLA recommends that:

### **Governments**

- Protect limitations and exceptions against contract override;
- Explore options to extend protection against unfair contract terms to libraries, as well as to enable forms of digital ownership;
- Develop effective and accessible means of promptly removing or circumventing technological protection measures or digital rights management that prevent legitimate uses;
- Ensure that there is a full set of exceptions and limitations to enable libraries to fulfil their missions, and consider using market investigations and other tools to verify and ensure fairness.

### **Right-holders**

- Respect exceptions and limitations, and avoid contract and licence terms that risk creating confusion in this respect;
- Provide reasonable prices for public and academic libraries, and provide current editions of all titles to all countries;
- Ensure that libraries have adequate time to consider and negotiate contract terms;
- Guarantee the ongoing availability of titles for the duration of a licence (limiting changes to a bare minimum), and provide transparency around additions to a collection as well as around pricing;
- Provide current editions of titles to all countries equally.

### **Libraries (and library consortia)**

- Actively negotiate against contract terms that limit traditional resource sharing of libraries in a way inconsistent with owned/print collections, as well as those that seek to restrict rights retention. Where individual libraries have less capacity to negotiate, the formation of consortia as well as support from national and international library organisations can help;
- Make use of standard addenda, where available, to assert rights (both in licence agreements and individual author agreements);
- In this context, seek actively to strike contract terms that are not applicable under the law;
- Gather evidence of contract terms that seek to restrict library activities, and be ready to engage competition and market authorities;
- Negotiate for unlimited simultaneous users and no digital rights management (DRM) where feasible.

*Agreed by the IFLA Governing Board, 16 August 2025*